

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

PREAMBLE

1. **Sections Affected**

R3-2-102 Table 1 R3-2-1102	<u>Rulemaking Action</u> New Section New Table Amend
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2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 3-107, 3-1482, 41-1073

Implementing statute: A.R.S. §§ 3-1482, 41-1073, 41-1074, 41-1075, 41-1076
3. **The effective date of the rules:**

October 8, 1998
4. **A list of all previous notices appearing in the Register addressing the adopted rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 473, February 13, 1998; 4 A.A.R. 561, February 20, 1998.

Notice of Proposed Rulemaking: 4 A.A.R. 1654, July 10, 1998.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Shirley Conard, Rules Specialist
Address:	Arizona Department of Agriculture 1688 West Adams, Room 124 Phoenix, Arizona 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 41-1072 et seq. requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes*. The rules must specify:

 1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);
 2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and
 3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The Department researched its licenses, certifications, permits and registrations to determined whether they constituted a "license" as contemplated by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

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According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . [n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues. The definition of "overall time-frame" is the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. Determining whether a license required an application, or whether a license is summarily issued upon request is the basis for whether the Department is required to develop time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-4-102. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. Some reviews are done from our regional offices by inspectors assigned to field work. This allows a more responsive approach to local needs, but also means there are less personnel doing more varied types of work. The majority of these licenses, however, are issued from the central office where supervisors and managers are required to give final approval. For this reason the time-frames given are "maximum," to allow for situations where the license application may have to be sent to the central office for approval, or where the assigned person may not be available for licensing duties. It is extremely rare that the fully allotted time-frames will be used; particularly when the administrative completeness review is generally all that is necessary. If all the required documentation and information is submitted, the license is issued, as there are no other criteria for denial.

A.R.S. § 3-727. Imported egg products: Permit; inspection; certificate; containers; fee. This Section requires the inspection and permitting of any egg product imported into the state to be fit for human consumption. Because the 1970 federal egg production inspection program preempted state imported egg requirements, the Department has not inspected, nor issued a permit for imported egg products for the last 28 years.

R3-2-1102. Slaughterhouse and Wholesale Processing establishment Registration. Fees. This rulemaking contains current licensing time-frames that are being transferred to the new R3-2-102 affecting Chapter 2.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

It is not anticipated that the adoption of this rule will have any impact on private industry, small business, or consumers. This rule action provides the codification of the time-frames currently observed by the Animal Services Division of the Arizona Department of Agriculture.

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Currently, when incomplete applications are received, the individual program either obtains the missing information by telephone, or sends the applicant a letter explaining what information is missing. This rule simply codifies the time-frames and procedures already observed by the Animal Services Division. This Division issued 665 licenses in 1997 that require time-frames. The estimated costs for training employees to understand the time-frame procedure, how to calculate the various review periods when additional information is requested, and the actual paperwork necessary to track each license will cost the Division approximately \$1.25 per application. If the same number of licenses are issued each year, this results in a \$831.25 yearly expenditure for administering these rules.

The Department does not anticipate that penalties will be incurred for noncompliance with the overall time-frames.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any businesses applying for a license will follow current procedures and practices and no additional cost or benefits shall occur. The proposed rules will provide an intangible benefit for these businesses by identifying the time-frames in which the Division will approve or deny licenses.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public shall follow current procedures and practices when applying for licenses and no additional cost or benefits shall occur. Consumers may also receive an intangible benefit by the identification of specific time limits for processing licenses.

F. *Estimated Costs and Benefits to State Revenues.*

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This rulemaking will have no impact on state revenues unless the Department does not grant or deny a license within the established time-frames and is required to refund fees and pay a penalty.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Table 1: The substantive completeness review time-frame for a "transfer of license without fee." was incorrect and has been changed to 30 days to reflect the overall time-frame of 44 days.

Laws 1998, Ch. 57, effective August 21, 1998 amending A.R.S. § 41-1073(D), eliminates the requirement to provide a rulemaking time-frame for any license taking 7 days or less to issue. The Dairy Sampler License (§ 3-619) is granted or denied within 2 days it is removed from this rulemaking.

One of the criteria for establishing whether time-frames are required is if a business can exist without the license. If it cannot, then a time-frame is required. The self-inspection program is not a mandatory program and self-inspection certificate books are issued on a voluntary basis. Cattle growers may receive livestock inspection by a livestock officer or inspector or, the grower may apply to the Department for a self-inspection certificate book to do the inspections. Time-frames for self-inspection certificates are removed from this rulemaking.

The location of the time-frame matrix was changed from subsection (D) to Table 1.

Subsection (B)(3), "may" was changed to "shall" and "unless the applicant requests an extension" was added after "file."

Subsection (C)(1) was changed for having the application "withdrawn" to "denying" the license if the applicant fails to provide the information requested.

Format and clarification changes were made at the request of G.R.R.C. staff. No substantive changes were made.

10. A summary of the principal comments and the agency response to them:

None.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

R3-2-102. Licensing Time-frames

Table 1. Time-frames

R3-2-1102. Slaughterhouse and Wholesale Processing Establishment Registration, Fees

ARTICLE 1. GENERAL PROVISIONS

R3-2-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

- 1. The administrative completeness review time-frame** established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

- 1. If the Department makes a comprehensive written** request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in

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- the written request within the additional information period, the Department shall deny the license.
2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason

for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Table 1. Time-frames (Calendar Days)

<u>License</u>	<u>Authority</u>	<u>Administrative Complete-ness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Complete-ness Review</u>	<u>Response to Additional Information</u>	<u>Overall Time-frame</u>
MEAT AND POULTRY INSPECTION						
<u>License to Slaughter</u>	<u>A.R.S. 3-2002</u> <u>A.R.S. 3-2003</u> <u>R3-2-208</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Transfer of license without fee</u>	<u>A.R.S. 3-2009</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>5</u>	<u>44</u>
<u>State Meat Inspection Service</u>	<u>A.R.S. 3-2047</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Sale or Exchange of Meat or Poultry</u>	<u>A.R.S. 3-2081</u> <u>R3-2-208</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Rendering Facility Certification</u>	<u>A.R.S. 3-2081</u> <u>R3-2-205</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Transfer of License</u>	<u>A.R.S. 3-2086</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>5</u>	<u>44</u>
<u>Official Slaughter Meat Licenses</u>	<u>A.R.S. 3-2122</u> <u>R3-2-208</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
FEEDING OF ANIMALS						
<u>Feed Lot License</u>	<u>A.R.S. 3-1452</u>	<u>14</u>	<u>14</u>	<u>60</u>	<u>14</u>	<u>74</u>
<u>Permit to Feed Garbage to Swine</u>	<u>A.R.S. 3-2664</u>	<u>14</u>	<u>14</u>	<u>60</u>	<u>14</u>	<u>74</u>
DAIRY PRODUCTS AND CONTROL						
<u>Milk Distributing Plant New Renewal</u>	<u>A.R.S. 3-607</u>	<u>7</u> <u>7</u>	<u>7</u> <u>7</u>	<u>7</u> <u>14</u>	<u>7</u> <u>7</u>	<u>14</u> <u>21</u>
<u>Milk Processing Plant New Renewal</u>	<u>A.R.S. 3-607</u>	<u>7</u> <u>7</u>	<u>7</u> <u>7</u>	<u>7</u> <u>14</u>	<u>7</u> <u>7</u>	<u>14</u> <u>21</u>
<u>Plant Licensing New Renewal</u>	<u>A.R.S. 3-665</u>	<u>7</u> <u>7</u>	<u>7</u> <u>7</u>	<u>7</u> <u>14</u>	<u>7</u> <u>7</u>	<u>14</u> <u>21</u>
<u>Request to market a product as a milk product</u>	<u>A.R.S. 601.01</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>14</u>
<u>Tester License</u>	<u>A.R.S. 3-619</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>14</u>
<u>Trade Product Label</u>	<u>A.R.S. 3-667</u>	<u>7</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>37</u>
<u>License</u>	<u>Authority</u>	<u>Administrative Complete-ness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Complete-ness Review</u>	<u>Response to Additional Information</u>	<u>Overall Time-frame</u>
LIVESTOCK SELF INSPECTION						

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<u>Equine Trader Permit</u>	<u>A.R.S. 3-1348</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>14</u>
EGG PRODUCTS AND CONTROL						
<u>Annual Licensing</u>	<u>A.R.S. 3-714</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>7</u>	<u>14</u>
AQUACULTURE						
<u>Aquaculture Facility</u>	<u>A.R.S. 3-2907</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
	<u>R3-2-1004</u>					
<u>Fee Fishing Facility</u>	<u>R3-2-1005</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Processor</u>	<u>R3-2-1006</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Transporter</u>	<u>R3-2-1007</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
<u>Special Licenses</u>	<u>A.R.S. 3-2908</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>44</u>
	<u>R3-2-1008</u>					
RATITES						
<u>Slaughterhouse and Whole-sale Processing Establishment Registration</u>	<u>A.R.S. 3-1482</u>	<u>14</u>	<u>14</u>	<u>60</u>	<u>14</u>	<u>74</u>
	<u>R3-2-1102</u>					

R3-2-1102. Slaughterhouse and Wholesale Processing Establishment Registration, Fees

- A. NO CHANGE
B. NO CHANGE.

C. Registration Processing Timeframe:

1. Within 7 business days of receiving the registration and fee, the Department shall notify the operator that the registration is either complete or incomplete.
 - a. If the registration is complete, the operator shall receive a registration certificate and information on how to obtain a Grant of Inspection.
 - b. If the registration is incomplete, the notice shall specify what information is missing.

2. An operator with an incomplete registration shall supply the missing information within 7 business days from the date of the notice. If the operator fails to do so, the Department may close the file. To become registered, an operator whose file has been closed shall reapply as a new applicant.

3. Upon receipt of the missing information, the Department shall notify the operator within 7 business days that the registration is complete.

~~D.C.~~ NO CHANGE.

~~E.D.~~ NO CHANGE.

~~F.E.~~ NO CHANGE.

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TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

PREAMBLE

1. Sections Affected

R3-3-1001
R3-3-1002
R3-3-1003
R3-3-1002
R3-3-1003
R3-3-1004
R3-3-1005
R3-3-1005
R3-3-1006
R3-3-1006
R3-3-1007
R3-3-1007
R3-3-1008
R3-3-1008
R3-3-1009
R3-3-1010
R3-3-1011

Rulemaking Action

Amend
New Section
Repeal
Repeal
Amend
Amend
Repeal
New Section
Repeal
Repeal
New Section
Repeal
New Section
New Section
New Section
New Section

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2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. §§ 3-3105, 3-3106, 3-3108, 3-3113, 3-3114.

3. **The effective date of the rules:**

October 8, 1998

4. **A list of all previous notices appearing in the Register addressing the adopted rule.**

Notice of Rulemaking Docket Opening: 1 A.A.R. 33, January 27, 1995.

Notice of Proposed Rulemaking: 4 A.A.R. 1558, July 6, 1998.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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6. **The explanation of the rule, including the agency's reasons for initiating the rules:**

In 1991, HB 2416, (A.R.S. §§ 3-3106, 3-3108 and 3-3109) mandated that the enforcement authority for the worker safety rules, previously administered by the Industrial Commission of Arizona, Department of Occupational Safety and Health (ICA/ADOSH), be transferred to the Arizona Department of Agriculture. While these rules provide adequate standards for monitoring worker protection for agricultural pesticides, the 1990 Auditor General's Performance Audit of the enforcement of the ICA/ADOSH pesticide worker safety rules, and the EPA proposed Worker Protection Standards (WPS) for Agricultural Pesticides indicate that more specific guidelines are necessary to effectively implement the WPS rules and statutes.

In 1992, the Department began working to update the worker safety rules and held meetings with the agricultural industry and various affiliated organizations. During this time the EPA proposed federal regulations governing worker protection standards for agricultural pesticides. The Department expected these standards to become final in late 1992 or early 1993.

When it became apparent that the EPA was not going to meet the deadline and because certain issues, such as reentry intervals, personal protective measures, notification and posting, and medical monitoring and medical care, were being discussed nationwide, the Department, the agricultural industry, and various affiliated organizations collectively decided to suspend discussions on the rules until EPA completed the comment period and finished the rulemaking process.

The final portions of the EPA WPS became effective July 17, 1995. The Department again began comparing the federal standards to state standards, drafting rules, and holding meetings at which representatives of agri-labor and agri-business discussed acceptable worker protection standards that would, in large part, reduce the exposure of agricultural workers to pesticides and pesticide residue.

R3-3-1002. Worker Protection Standards Authority. The EPA revisions expand the scope of the standards to include not only workers performing hand labor, but persons who handle, mix, load, and apply pesticides in locations where hand labor is being performed. The EPA rules also expand requirements for warning and notification of pesticide applications, personal protective equipment, reentry restrictions, and add provisions for decontamination, emergency medical information and transportation, monitoring handlers of highly toxic pesticides, and appropriate training.

After comparing the federal WPS with Department rules, except for 2 other areas, the Department rules were not as comprehensive as EPA standards. Therefore, excluding the training standards, the Department incorporates by reference the federal Worker Protection Standards.

Besides training, the state proposed rules are more stringent than federal standards in two areas: (1) employer notification to a farm labor contractor of the areas being treated or that have been treated with a pesticide for which the reentry interval has not expired; and (2) requiring containers used to apply pesticides be equipped with covers that prevent splashes and spills.

R3-3-1003. Pesticide Safety Training. Although the proposed rule appears to have considerable changes, most of the changes deal with arranging the information in a logical order. Any additional information consists of federal requirements that pertain to the training program.

R3-3-1004. Farm Labor Contractor Oral Notification. The notification provisions in the federal WPS address the working conditions of 2 types of employees: handlers, who handle agricultural pesticides (mix, load, apply, clean or repair equipment, act as flaggers, etc.) and workers, who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests. There are 3 types of provisions intended to: (1) Eliminate or reduce pesticide exposure; (2) mitigate actual pesticide exposures; and (3) inform employees about pesticide hazards.

EPA standards concerning provision (3), require an employer to inform workers of the pesticide location treatment areas on an agricultural establishment, helping workers avoid exposure to the areas. Because employees may report to work from differ-

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ent locations at different times of the day, for example, coming from on-farm camps, local housing, or being bused from cities or other farms, the employer does not always see the workers before they enter a field. This rulemaking requires an employer to inform the farm labor contractor of the location of the agricultural establishment's central posting site, or of restrictions on entering the treated area, and clarifies responsibilities for employee notification.

R3-3-1005. Tanks Using Toxicity Category I or Restricted Use Pesticides. The current R3-3-1007 establishes the requirements for personal protective equipment (PPE). Except for information relating to containers, PPE is thoroughly covered in the federal standards. This new Section retains container requirements currently in R3-3-1007(J) and adds the requirement of water supply protection from back-siphoning pesticide mixtures.

R3-3-1006. Agricultural Emergency. This Section discusses an agricultural emergency and establishes the information required for the Department to consider the emergency. If workers need to enter an area before the expiration of a restricted-entry interval to perform tasks, including hand labor tasks, a grower may obtain permission, in advance, from the Department. An emergency may consist of: unexpected, severe weather, including frost, high winds, tornados, or a severe pest outbreak immediately before harvest of a time-sensitive crop, including soft fruits, soft vegetables, or floral crops. If an emergency is anticipated through a weather forecast, pest outbreak bulletin, or other warning, an employer may not apply a pesticide after notice of the emergency, and then due to the emergency, require workers to enter the treated area before the restricted-entry interval has expired.

R3-3-1008 through R3-3-1011. sets up the parameters for assessing civil penalties with respect to the gravity of the violation (A.R.S. § 3-3113(I)) by using criteria established in OSHA standards and in A.R.S. § 3-3113.

The following information provides the determinations for worker protection safety cases during the last 5 years. Individual cases may contain from 0 to 6 violations per case, but not all cases include evidence to confirm each violation, nor will each violation warrant a tangible resolution. The non-violative category means that no evidence existed to prove the violation. Examples of non-violative are: complainant unwilling to cooperate, violation is not pesticide related, worker got dust in eye -- no pesticide violation, non crop application, and discrepancies found during inspection.

• In 1993, the Department opened 15 worker protection safety cases. Of the following violations, 6 dealt with suspected exposure:

- | | |
|-------------------------------|----------------------|
| 5 – Failure to Train | 8 – No PPE Available |
| 1 – Restricted Entry Interval | 3 – Labeling |

The resolution of those cases were as follows:

- 2 – Insufficient information to make a determination
- 1 – Too long a period of time occurred between incident and report to make a determination
- 1 – Case referred to tribal authority
- 3 – Non-violative
- 6 – De minimus
- 2 – Nonserious

Total fines paid in 1993 were \$700.

• In 1994, the Department opened 6 worker protection safety cases. Of the following violations, 5 dealt with suspected exposure:

- 2 – No PPE Available

The resolution of those cases were as follows:

- 3 – Insufficient information existed to make a determination
- 1 – Non-violative
- 2 – De minimus

Total fines paid in 1994 were \$0.

• In 1995, the Department opened 23 worker protection safety cases. Of the following violations, 9 dealt with suspected exposure:

- | | |
|--------------------------------|---|
| 6 – Failure to Verify Training | 10 – Failure to Train |
| 6 – No PPE Available | 1 – Failure to Issue Worker/Handler Cards |
| 3 – Restricted Entry Interval | 1 – Not Wearing PPE |
| 1 – No Application List | 5 – No Safety Poster |

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10 – Label Violation

2 – Change Site/Clothes

The resolution of those cases were as follows:

3 – Complete case records cannot be found to determine the final result

7 – Non-violative

13 – Warning Letters

3 – DeMinimus

16 – Nonserious

1 – Serious

Total fines paid in 1995 were \$7,020.

• In 1996, the Department opened 26 worker protection safety cases. Of the following violations, 2 dealt with suspected exposure:

6 – Training Records

1 – No Worker Card

7 – No Handler Card

2 – Failure to Verify Training

12 – Failure to Train

7 – Failure to Issue Cards

5 – No PPE

5 – No Application List

1 – Restricted Entry Internal

8 – No Decontamination Site

11 – No Medical Information

5 – No Safety Poster

4 – Label Violation

3 – Change Site/Clothes

The resolution of those cases were as follows:

4 – Appropriate notification not given/case closed

1 – Time expired for making a determination

20 – Non-violative

13 – Warning Letters

7 – DeMinimus

5 – Nonserious

1 – Serious

Total fines paid in 1996 were \$1,830.

• In 1997, the Department opened 19 worker protection safety cases.

1 – No Handler Card

10 – Failure to Verify Training

12 – Failure to Train

2 – No Sign

5 – No PPE Available

9 – No Decontamination Site

1 – No Application List

9 – No Medical Information

1 – No Safety Poster

14 – Label Violation

4 – Change Site/Clothes

8 – Agricultural Safety Compliance

5 – Disposal and storage

1 – Safe Environment

The resolution of those cases were as follows:

1 – No relation to pesticide issues/case closed

1 – Non-violative

3 – Warning Letters

18 – Nonserious

Total fines paid in 1997 were \$7,660.50.

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7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not Applicable.

8. The summary of the economic, small business, and consumer impact:

This rulemaking clarifies the current EPA worker protection standards that became final July 17, 1995. The standards on reentry intervals, personal protective measures, notification and posting, medical monitoring and medical care are required by federal rules. Even though the Department anticipates this rulemaking will have an impact on small business, the Department does not expect the impact will have a disproportionate or unfair effect.

A. Estimated Costs and Benefits to the Arizona Department of Agriculture.

The changes create no additional reporting or inspection responsibilities on the agency. Because civil penalties are formulated with respect to the gravity of the violation, the new Sections do not create additional procedures for implementation. No additional costs will be incurred by the Department.

B. Estimated Costs and Benefits to Political Subdivisions.

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. Businesses Directly Affected By the Rulemaking.

Estimated Costs and Benefits to growers, workers, handlers, and WPS training instructors:

Although this rulemaking does not include major changes in the training and notification Sections, minor changes in these 2 areas affect and, in this case reduce, the number of exposure of pesticide handlers and field workers to pesticide products and residues. The benefits to these groups include a reduction in lost time from the work force, reduction of medical expenses, increased productivity from a workforce less affected by pesticide poisoning, reduction of the possibility of accidental death from exposure to pesticides, and reduction of the elapsed time from pesticide exposure to the time medical treatment is received. These benefits are difficult to quantify due to the lack of specific pesticide-related injury and illness statistics, but minor changes in these rules will have a positive impact on these types of benefits for the agricultural employee.

The EPA estimates that tens-of-thousands of acute illnesses and injuries and an unknown number of delayed-onset illnesses occur annually to agricultural employees in the United States as the result of occupational exposure to pesticides used in the production of agricultural plants. These injuries and illnesses continue to occur despite the protections offered by the WPS and by product-specific regulation of pesticides.

According to the 1997 Pesticide Poisoning Surveillance Annual Report, published by the Epidemiology and Disease Control Office of Environmental Health, Arizona Department of Health Services, two occupational agriculture-related illness reports were received in 1997, as required by A.R.S. § 36-606. The number of telephone calls reporting pesticide exposure, or pesticide questions and concern are: 0 definite cases, 2 probable cases, and 0 possible cases, related to agricultural employment were determined.

The Arizona State Monitor Advocate Office of the Department of Economic Security and Employment Services Administration estimates that the number of migrant-seasonal farm workers in Arizona exceeds 90,000, (includes documented farm workers and their families). The Pesticide Poisoning Surveillance Annual Report noted that the exposure rates from the pesticide handler and user occupations are not greater than those for the nonpesticide occupations.

Pesticide-provoked illnesses mimic many medical conditions, making chronic cases difficult to diagnose. In addition to the number of poisonings for which medical treatment is sought, there are numerous instances where pesticide-provoked symptoms are not treated by a physician. Symptoms of pesticide poisoning include headaches, muscle aches, and fatigue.

The following information, provided by the Arizona Department of Economic Security Research Division, shows that there were approximately 861 agricultural industry employers in Arizona during the 1st quarter of 1997. Additionally, these affected employers employ approximately 30,771 workers.

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ARIZONA AGRICULTURE
1st quarter 1997

SIC #	INDUSTRY	ESTABLISHMENTS	EMPLOYEES
0111	Wheat	7	30
0119	Cash Grains (Not Elsewhere Classified)	5	46
0131	Cotton	294	2,785
0134	Irish Potato	6	109
0139	Field Crops (Except Cash Grains)	81	765
	Not Elsewhere Classified		
0161	Vegetables & Melons	83	4,423
0172	Grapes	7	381
0173	Tree Nuts	11	404
0174	Citrus Fruits	31739	
0175	Deciduous Tree Fruits	8	163
0179	Fruits & Tree Nuts - (Not Elsewhere Classified)	5	33
0181	Ornamental Floriculture & Nursery Products	36	1,024
0191	General Farms, Primarily Crop	9	160
0711	Soil Preparation Services	9	58
0721	Crop Planting, Cultivating & Protecting	43	233
0722	Crop Harvesting, Primarily by Machine	58	3,895
0723	Crop Preparation Services for Market, Except Cotton Gins	66	3,897
0761	Farm Labor Contractors & Crew Leaders	86	10,162
0762	Farm Management Services	16	1,464
	1st QUARTER TOTAL	861	30,771

Standard Industry Classification (SIC) is the statistical classification standard for all establishment-based Federal economic statistics classified by industry.

D. Estimated Costs and Benefits to Private and Public Employment.

Although the rules apply equally to public employees, including universities and colleges, and private sector employees, costs are expected to be minimal because public agencies are expected to have a knowledge of pesticides and to have appropriate equipment as required by the pesticide label. Training, and medical care provisions may reduce costs borne by AHCCCS and other health care providers.

E. Estimated Costs and Benefits to Consumers and the Public.

This rulemaking will have no impact on consumers or the public.

F. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state revenues.

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9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

At the request of the Office of the Secretary of State, minor editing changes were made consisting of changing spelled-out numbers to arabic numerals; latin phrases to English equivalents; words separated by a slash; and the word "and" after a semicolon.

The following changes have been made as a result of testimony at the public hearing:

R3-3-1006(A), add 'their' before designee.

R3-3-1007(C)(3), change the wording from '. . . months that violates the training provision of this Section,' to '. . . months that violate the training provisions of this Section.'

10. A summary of the principal comments and the agency response to them:

None.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

R3-3-1002. Except 40 CFR 170.130 and 170.230, Worker Protection Standards, 40 CFR 170, as amended June 26, 1996.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION**

ARTICLE 10. AGRICULTURAL SAFETY

Section

- R3-3-1001. Definitions
- R3-3-1002. Worker Protection Standards
- R3-3-1003. Medical monitoring and medical care
- R3-3-1002- R3-3-1003. Pesticide Safety Training
- R3-3-1004. Notification and pesting Requirements for Farm Labor Contractors
- R3-3-1005. Reentry Intervals
- R3-3-1005. Container Used For Mixing or Applying Pesticides
- R3-3-1006. Decontamination and washing facilities
- R3-3-1006. Agricultural Emergency
- R3-3-1007. Personal protective measures
- R3-3-1007. Violations and Civil Penalties
- R3-3-1008. Employees working alone; conditions
- R3-3-1008. Penalty Adjustments
- R3-3-1009. Failure to Abate
- R3-3-1010. Calculation of Additional Penalties For Unabated Violations
- R3-3-1011. Repeated or Willful Violations

ARTICLE 10. AGRICULTURAL SAFETY

R3-3-1001. Definitions

In addition to the definitions set forth in A.R.S. § 3-3101 the following terms apply to this Article:

- 1. "Agricultural emergency" means a sudden occurrence or set of circumstances that:
 - a. An agricultural employer could not have anticipated and over which the agricultural employer has no control,
 - b. Requires entry into a treated area during a restricted-entry interval, and
 - c. No alternative practices would prevent or mitigate a substantial economic loss.
- 1-2. "Agricultural employer" means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to per-

form activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses such agricultural workers.

- 2-3. "Agricultural establishment" means any farm, forest, nursery, or greenhouse using pesticide products which that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only that restricted products that do not have a federal worker protection statement on the label is exempt from the requirements of this Article.
- 3-4. "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes: food, feed, and fiber plants; trees; turfgrass; flowers, shrubs, ornamentals; and seedlings.
 - a. Food, feed, and fiber plants;
 - b. Trees;
 - c. Turfgrass;
 - f. Flowers, shrubs;
 - g. Ornamentals; and
 - h. Seedlings.
- 4. "Carbamate pesticides" means esters of N-methyl carbamic acid which inhibit cholinesterase.
- 5. "Chemical resistant" means a material which allows no measurable movement of pesticide through the material during use.
- 6-5. "Chemigation" means the application of pesticides through irrigation systems.
- 7. "Closed system" means any method that eliminates open atmospheric contact with a pesticide or its rinse solution, if any, during transfer from the original container to the application equipment or system.
- 8. "Commercial pesticide handling establishment" means any establishment, other than an agricultural establishment, that:
 - a. Employs any person, including a self-employed person, to apply on an agricultural establishment,

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- pesticides used in the production of agricultural plants:
- b. Employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a pest control advisor.
- 5-6. "Consultation" means an on-site visit by, or a response to an inquiry from, the Agricultural Consulting and Training program personnel, pursuant to A.R.S. § 3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.
9. "Disposal" means the discarding of a pesticide container which results in the deposit, dumping, burning, or placing of the container into or on any land or water.
7. "*De minimis violation*" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health. A.R.S. § 3-3101(2).
- 10-8. "Early entry" means any worker or handler entering the a treated area after a pesticide is applied to a location on the agricultural establishment and prior to before the expiration of the restricted-entry interval.
11. "Farm" means any operation, other than a nursery or forest engaged in the outdoor production of agricultural plants:
9. "Farm labor contractor" means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.
- 12-10. "Flagger" means a person who indicates an aircraft spray swath width from the ground.
13. "Forest" means any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products.
14. "Greenhouse" means any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit worker entry. This term includes polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.
11. "Gravity based penalty" means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.
15. "Handle" means any activity involving contact with pesticides as a result of:
- a. Mixing, loading, transferring or applying pesticides;
- b. Working as a flagger for an aerial pesticide application crew;
- c. Disposal of pesticide containers; or
- d. Working with contaminated equipment.
- This definition does not apply to employees who transport pesticides in unopened containers.
- 16-12. "Handler" means any person, including a self-employed person:
- a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who is doing does any of the following:
- i. Mixing, loading, transferring, or applying pesticides;
- ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;
- iii. Handling opened open containers of pesticides;
- iv. Acting as a flagger;
- v. Cleaning, adjusting, handling, or repairing the any parts of mixing, loading, or application equipment that may contain pesticide residues;
- vi. Assisting with the application of pesticides;
- vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling has been is reached or one any of the ventilation criteria established by either in R3-3-1002 or in the labeling has been met to do any of the following:
- (1) To operate ventilation equipment,
- (2) To adjust or remove coverings used in fumigation, or
- (3) To monitor air levels.
- viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.
- ix. Performing tasks as a pest control advisor:
- (1) During during any pesticide application.
- (2) Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by R3-3-1002 or in the labeling has been met.
- (3) During any restricted entry interval.
- b. The term handler does not include:
- i. Any person who is only handling handles only pesticide containers that have been are emptied or cleaned according to pesticide product labeling instructions or, in the absence of such labeling instructions, have been subjected to triple rinsing are triple-rinsed or its equivalent;
- ii. Any person who is only handling handles only pesticide containers that are unopened and is not at the same time also doing a handling task; or
- iii. Any person who will be repairing, cleaning, or adjusting repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.
- 17-13. "Handler employer" means any person who is self-employed as a handler; or who employs any a handler, for any type of compensation.
14. "*Nonserious violation*" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice. A.R.S. § 3-3101(6)
18. "Nursery" means any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include flowering and

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foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.

19. "Organophosphorous pesticides" means cholinesterase inhibiting compounds containing the elements of carbon and phosphorus.
20. "Owner" means any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered in this Article. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this Article.
- 21.15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.
- 22.17. "Pesticide" means:
- (a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
 - (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
- A.R.S. § 3-341(21)
23. "Reentry interval" means the period of time after a pesticide application during which entry into the treated area is restricted, including at a minimum the time required for sprays to dry, dusts to settle and vapors to disperse.
- 24.18. "Restricted-entry interval" means the time after the end completion of a pesticide application during which entry into the a treated area is restricted as indicated by the pesticide product labeling label.
19. "Restricted use pesticide" means a pesticide classified as such by the United States Environmental Protection Agency. A.R.S. § 3-361(8)
20. "Serious violation" means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice. A.R.S. § 3-3101 (10).
21. "Substantial economic loss" means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.
25. "Toxicity Category I," "Toxicity Category II," "Toxicity Category III," and "Toxicity Category IV" are defined by 40 CFR 156.10(h)(1), as set forth in 40 CFR 150 to 189, revised as of July 1, 1988, pages 81 and 82,

which is incorporated herein by reference and on file and available for review with the Office of the Secretary of State.

26.22. "Treated area" means any area to which a pesticide is being directed or has been directed.

27.23. "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who is performing performs activities relating to the production of agricultural plants on an agricultural establishment to which this Article applies. While persons The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment are performing who performs tasks as a pest control advisors, they are not workers covered by the requirements of this Article.

R3-3-1002. Worker Protection Standards

- A. Except 40 CFR 170.130 and 170.230, worker protection regulations shall be conducted as prescribed in 40 CFR 170, as amended June 26, 1996. This material is incorporated by reference, on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
- B. When the provisions of 40 CFR 170 are inconsistent with this Article, the provisions of this Article shall apply.

R3-3-1003. Medical monitoring and medical care

- A. For all activities involving the use of pesticides, the employer shall make prior arrangements for emergency medical care and shall post in a prominent place at the worksite the name, address and telephone number of the physician, clinic or hospital emergency room providing such emergency medical care.
- B. If the employer has reasonable cause to believe that an employee has a pesticide illness or has been exposed to a pesticide that can reasonably be expected to lead to an employee's illness, the employer shall ensure that the employee is immediately transported for emergency medical care.
- C. The employer shall provide pre-exposure baseline cholinesterase tests for pilots, mixer/loaders and any other employees who are expected to handle any pesticide product with the signal word "DANGER" or "WARNING" on the label and which contain organophosphorous pesticides in other than their original, sealed containers for 30 hours or more in a 30-day period.

R3-3-1002. R3-3-1003. Pesticide Safety Training

- A. Pursuant to subsection (II), the agricultural employer shall assure that each worker has received pesticide safety training during the last five years, counting from the end of the month in which the training was completed.
- A. Any worker or handler who meets any of the following requirements is exempt from this Section:
- 1. A handler who is currently certified as an applicator of restricted use pesticides, under R3-3-207 or R3-3-208;
 - 2. A worker who is currently certified as an applicator of restricted use pesticides, under R3-3-207 or R3-3-208, or who holds a current handler card;
 - 3. A worker or handler certified as a trainer in accordance with this Section;
 - 4. A worker or handler who is certified or licensed as a crop advisor by a program approved in writing by the Environmental Protection Agency or the Department.
- H. B. Verification of training by the agricultural employer or handler employer. Training verification.

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1. Before a handler performs a handling task, the handler employer shall verify that each handler has received pesticide safety training during the last 3 years, excluding the month in which the training was completed. The agricultural employer shall verify that each worker has received pesticide safety training during the last 5 years before allowing a worker entry into the area:

- a. To which a pesticide has been applied during the past 30 days, or
- b. To which a restricted-entry interval for the pesticide has been in effect within the past 30 days.

2. The agricultural employer and the handler employer, or the designee, shall ~~assure~~ ensure that a worker or handler possesses a training verification card by visually examining the card. If the agricultural employer or the handler employer has no reasonable basis to believe that the worker or handler training verification card is invalid, that determination shall meet the requirements of assuring that the worker or handler has been trained.

3. A handler or worker does not possess a valid training verification card is valid if:

- a. The handler or worker training verification card has ~~not~~ been issued in accordance with this rule Section; or
- b. The handler or worker training verification card has ~~not been issued to the handler or the worker bearing the training verification card;~~ or
- e-b. The worker training was completed ~~more than five~~ within 5 years of the verification card issuance, or the handler training was completed ~~more than three~~ years within 3 years of the verification card issuance, before the beginning of the current month excluding the month in which the training was completed.

C. Pesticide Safety Information.

1. The agricultural employer shall provide the following pesticide safety information, in a manner that the employee can understand, to any worker who does not possess a training verification card before that worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect:

- a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;
- b. Workers may prevent pesticides from entering their bodies by:
 - i. Following directions or signs, or both, about keeping out of a treated or restricted area;
 - ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;
 - iii. Wearing work clothing that protects the body from pesticide residue;
 - iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;
 - v. Washing work clothes separately from other clothes before wearing;

- vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.

- c. Additional pesticide safety training shall be provided before the 6th day of entry into a pesticide treated area.

2. The agricultural employer shall verify compliance by using the employee's signature or other verifiable means to acknowledge receipt of the information required in subsection (C)(1):

D. Pesticide Safety Training.

1. The agricultural employer shall provide pesticide safety training to a worker before:

- a. That worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities;
- b. The 6th day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.

2. The pesticide safety training program shall be in a language easily understood by the workers or handlers, using a translator if necessary.

- a. General pesticide safety information presented either orally from written materials, or audiovisually, shall contain nontechnical terms that the handlers and workers can understand. The trainer also shall respond to handlers' and workers' questions.
- b. Information shall relate solely to pesticide safety training.
- c. Specific pesticide safety training information including:

- i. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;
- ii. Routes by which pesticides can enter the body;
- iii. Signs and symptoms of common types of pesticide poisoning;
- iv. Emergency first aid for pesticide injuries or poisonings;
- v. How to obtain emergency medical care;
- vi. Routine and emergency body decontamination procedures, including emergency eye-flushing techniques;
- vii. Warnings about taking pesticides or pesticide containers home.
- viii. How violations may be reported to the Department.

- d. In addition to the information in subsection (D)(2)(c), the pesticide safety training program for the worker shall include the following:

- i. Where and in what form pesticides may be encountered during work activities;
- ii. Hazards from chemigation and drift;
- iii. Hazards from pesticide residue on clothing;

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- iv. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, posting of warning signs, oral warning, the availability of specific information about applications, protection against retaliatory acts, and the design of the following warning sign.



- e. In addition to the information in subsection (D)(2)(c), the pesticide safety training program for the handler shall include the following:
- i. Format and explanation of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
 - ii. Need for and appropriate use of personal protective equipment;
 - iii. Prevention, recognition, and first aid treatment of heat-related illness;
 - iv. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
 - v. Environmental impact of drift, runoff, and potential impacts on wildlife;
 - vi. Requirements of this Article that shall be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and protection against retaliatory acts.
- f. Upon the successful completion of training, the trainer shall issue a training verification card, as prescribed by the Department, to each handler or worker and shall maintain a record in indelible ink containing the following information:
- i. The name and signature of the trained worker or handler;
 - ii. The training verification card number;
 - iii. The issue and expiration date of the training verification card;
 - iv. The social security number or the unique trainer-assigned identification number of the worker or handler;
 - v. The name and signature of the trainer; and
 - vi. The address or location of where the training occurred, including city, county and state.
- B.E. Training workers for early entry irrigation and limited contact early-entry activities, permitted by R3-3-1005 as prescribed in R3-3-1002, shall consist of instructing the worker in pesticide safety occur before the worker enters a treated area on the agricultural establishment during a restricted-entry interval and contacts anything that has been treated with the pesticide to which the restricted-entry interval applies, including soil, water, or surfaces of plants.
- C. Except as provided in subsection (B), training for other agricultural workers shall take place:
1. Until October 20, 1997, before the 16th day that a worker enters an area on the agricultural establishment where, within the last 30 days a pesticide has been applied or a restricted-entry interval for such pesticide has been in effect.
 2. After October 20, 1997, before the sixth day that a worker enters an area on the agricultural establishment where, within the last 30 days a pesticide has been applied or a restricted-entry interval for such pesticide has been in effect.
- D. Before a handler performs a handling task, the handler employer shall verify, pursuant to subsection (H), that the handler has been trained in accordance with this rule during the last three years, counting from the end of the month in which the training was completed.
- E. Exceptions:
1. A handler who is currently certified as an applicator of restricted-use pesticides, pursuant to R3-3-207 or R3-3-208, need not be trained as a handler or possess a handler certificate in accordance with this rule.
 2. A worker who is currently certified as an applicator of restricted-use pesticides, pursuant to R3-3-207 or R3-3-208, or who satisfies the handler training requirements prescribed in paragraphs (F)(2) and (4), need not be trained as a worker or possess a worker certificate in accordance with this rule.
 3. A worker or handler certified as a trainer in accordance with this rule need not be trained as a worker or handler nor possess worker or handler certification.
- F. Trainer requirements:
1. Any person wishing to be certified as a pesticide safety trainer shall:
 - a. Complete a pesticide train-the-trainer program provided by the Department pursuant to subsection (G); or
 - b. Hold a current restricted-use certification for certified applicators; or
 - c. Be designated as a trainer of certified applicators or pesticide handlers by a State, Tribal, or Federal agency having jurisdiction.
 2. An applicant shall submit an affidavit provided by the Department verifying that workers and handlers shall be trained according to the requirements of subsection (G). The affidavit shall include the following information:
 - a. The name, address, telephone number and signature of the applicant;
 - b. The date of the application.
 3. Trainer certification pursuant to subparagraph (F)(1)(a) is nontransferable and shall be valid for three years from the date of issuance except as otherwise provided in A.R.S. § 3-3105.01(C). Trainer certification shall be automatically renewed after completion of a Department recertification course.
 4. Trainer certification pursuant to subparagraphs (F)(1)(b) is valid until December 31 of the restricted use certifica-

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- tion year except as otherwise provided in A.R.S. § 3-3105.01(C). Trainer certification shall be renewed every three years if the restricted use certification has been renewed and the trainer has completed the Department trainer recertification course, or three hours of continuing education units approved by the Assistant Director.
5. Trainers shall retain the information contained in paragraph (G)(6) for five years for workers, and three years for handlers, from the date of issue of the verification card.
6. The Department may inspect and copy the trainer's worker and handler records prescribed in paragraph (G)(6).
- G.** The training program shall contain the following components:
1. General pesticide safety information shall be presented to handlers and workers either orally from written materials, or audiovisually, in a manner that the handlers and workers can understand (such as through a translator), using nontechnical terms. The presenter also shall respond to handlers' and workers' questions.
 2. Information relating solely to pesticide safety training.
 3. Specific pesticide safety training information including:
 - a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization;
 - b. Routes by which pesticides can enter the body;
 - c. Signs and symptoms of common types of pesticide poisoning;
 - d. Emergency first aid for pesticide injuries or poisonings;
 - e. How to obtain emergency medical care;
 - f. Routine and emergency decontamination procedures, including emergency eyeflushing techniques;
 - g. Proper methods of storage and disposal of pesticides and pesticide containers, and warnings about taking pesticides or pesticide containers home.
 4. In addition to the information in paragraph (G)(3) the pesticide safety training program for the worker shall convey the following information:
 - a. Where and in what form pesticides may be encountered during work activities;
 - b. Hazards from chemigation and drift;
 - c. Hazards from pesticide residues on clothing;
 - d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warning, the availability of specific information about applications, and the protection against retaliatory acts.
 5. In addition to the information in paragraph (G)(3) the pesticide safety training program for the handler shall convey the following information:
 - a. Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
 - b. Environmental concerns such as drift, runoff, and wildlife hazards;
 - c. Need for and appropriate use of personal protective equipment;
 - d. Prevention, recognition, and first aid treatment of heat-related illness;
 - e. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
 - f. Requirements of this Article that shall be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontaminations, and the protection against retaliatory acts.
6. Upon the successful completion of the training program, the trainer shall issue a training verification card, as prescribed by the Department, to each handler or worker and shall record in ink or other indelible form the following information:
 - a. The name and signature of the trained worker or trained handler;
 - b. The training verification card number;
 - c. The issue and expiration date of the training verification card;
 - d. The social security number or the trainer assigned identification number of the worker or handler;
 - e. The name and signature of the trainer; and
 - f. The training location, by city or county and state.
- I.F.** Worker and handler training verification cards from all other federally approved worker safety training programs shall be accepted in Arizona as proof of training.
- G.** Trainer requirements.
1. Any person applying to be certified as a pesticide safety trainer shall:
 - a. Complete the Department pesticide safety training program established in subsection (D); or
 - b. Hold a current restricted use certification, issued by the Department for certified applicators.
 2. An applicant shall submit a signed affidavit to the Department verifying that workers and handlers shall be trained according to the requirements of subsection (D)(2). The affidavit shall include the following:
 - a. The name, address, telephone number and signature of the applicant;
 - b. The date of the application.
 3. Trainer certification pursuant to subsection (G)(1)(a) is nontransferable and is valid for 3 years from the date of issuance, excluding the month in which the trainer was certified, except as otherwise provided in subsection (I). Trainer certification shall be renewed upon completion of a Department worker protection standard recertification course.
 4. Trainers shall maintain the records contained in subsection (D)(2)(f) for 5 years for workers, and 3 years for handlers, excluding the month of the verification card issuance.
 5. The trainer shall make available the worker and handler records prescribed in subsection (D)(2)(f) for inspection and copying by the Department.
- J.H.** The Assistant Director or the Assistant Director's representative designee, after showing proper identification and credentials, shall be permitted to inspect places where worker safety training is being held and to question trainers and attendees to determine whether the trainer is following compliance with the requirements of this rule Section.

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K-I. The following actions may be grounds for suspension, revocation, or denial of trainer certification:-

1. Failing to follow the worker and handler training requirements set forth in paragraphs prescribed in subsections (G)(1) through (5) (D)(2)(a) through (D)(2)(e).
2. Failing to issue training verification cards to workers and handlers as prescribed in paragraph subsection (G)(6) (D)(2)(f).
3. Failing to maintain the training information required prescribed in subsection (G)(5) (4).
4. Acting as a trainer without certification as prescribed in subsection (F) (G).
5. Failing to fulfill the requirements of the training agreement affidavit as set forth in subdivision (F)(2) prescribed in subsection (G)(2).
6. Having had a similar certification revoked, suspended or denied in this jurisdiction or in any other jurisdiction within the last three years 3 years.

R3-3-1004. Notification and posting Requirements for Farm Labor Contractors

- A.** The employer shall orally warn employees who work in the fields regarding areas being treated or which have been treated with a pesticide for which the reentry interval has not expired. The oral warning shall be given so that it is clearly understood by each employee. The oral warning shall include:
1. The specific locations and descriptions of the pesticide treated areas or areas to be treated.
 2. The period of the work day during which workers may not enter without direction.
- B.** The person having controlling authority for the operation of a farm or his designee shall orally provide information to any farm labor contractor performing work on that farm which advises that farm labor contractor of the areas being treated or which have been treated with a pesticide for which the reentry interval has not expired. The orally provided information shall include:
1. The specific location and description of the pesticide treated areas or areas to be treated; and
 2. The period of the workday during which workers are not permitted to enter treated areas
- C.** The person having controlling authority for the operation of a farm or his designee shall post warning signs at the usual points of worker entry to the treated field when any pesticide having a reentry interval of 48 hours or greater is applied to broccoli, cauliflower, celery, flowers, grapes, lettuce, nectarines, ornamentals, peaches, plums, or strawberries.
- D.** Whenever warning signs are required, the warning signs shall be posted before scheduled application and shall be removed within 72 hours after expiration of the reentry interval.
- E.** The warning signs shall contain the words "DANGER" and "PESTICIDES" at the top and "KEEP OUT" at the bottom in a language understood by each employee. Near the center of the sign shall be a circle containing an upraised hand on the left and a stern human face on the right. Letters for all the words shall be red and at least 2 1/4 inches high and clearly legible. The background outside the circle shall be white. The hand and a large portion of the face shall be white. The length of the hand shall be at least twice the height of the letters and the length of the face shall be only slightly smaller than the hand. The remainder of the inside of the circle shall be red.
- A.** The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:

1. The location of the agricultural establishment's central posting site; and
2. The restrictions on entering the treated area as specified in 40 CFR 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

B. The farm labor contractor shall:

1. Post or provide the worker in writing, with the information in 40 CFR 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area and is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).

R3-3-1005. Reentry intervals

- A.** Where a product specific reentry interval has been established by the United States Environmental Protection Agency for a pesticide product (under the provision of 40 CFR 170, revised July 1, 1988, pages 261 thru 263, which is incorporated herein by reference and on file with the Office of the Secretary of State), that product specific reentry interval shall apply.
- B.** Where no product specific reentry interval has been established by the United States Environmental Protection Agency for a pesticide product, the reentry interval shall be as follows:
1. If the pesticide product contains a sole active ingredient which is in Toxicity Category I and which is an organophosphorous or carbamate pesticide, the reentry interval shall be 48 hours.
 2. If the pesticide product contains any other sole active ingredient which is in Toxicity Category I, the reentry interval shall be 24 hours.
 3. If the pesticide product contains a sole active ingredient which is in Toxicity Category II and which is an organophosphorous or carbamate pesticide, the reentry interval shall be 24 hours.
 4. If the pesticide product contains any other sole active ingredient which is in Toxicity Category II, the reentry interval shall be the time necessary for sprays to dry, dusts to settle and vapors to disperse.
 5. If the pesticide product contains only active ingredients which are in Toxicity Category III or IV, the reentry interval shall be the time necessary for sprays to dry, dusts to settle and vapors to disperse.
 6. If the pesticide product contains more than one active ingredient, the reentry interval shall be the longest interval among the active ingredients determined by the criteria in paragraphs (1) through (5).
- C.** Reentry for special circumstances is allowed for any of the following:
1. Irrigating, but only with suitable protection such as chemical resistant boots and gloves.
 2. Operating tractors and other machinery, if the employee is not in contact with the plants.
 3. Other maintenance or scouting procedures where urgent conditions justify early reentry, but only with the protective clothing and equipment specified by the pesticide product labeling.

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R3-3-1005. Container Used For Mixing or Applying Pesticides

- A. All openings on containers used for applying pesticides shall be equipped with covers that prevent splashes and spills.
- B. All containers shall:
 - 1. Be translucent or
 - 2. Have a means to indicate externally the internal liquid level in the container, or
 - 3. Have a filler hose nozzle that automatically stops the filling operation before the liquid pesticide mixture spills over the top of the container.
- C. Any employer who mixes or applies any liquid pesticide mixture in a container with a capacity of more than 49 gallons shall have a handler present whenever pesticides are mixed or containers are filled to ensure that the liquid pesticide mixture does not spill over the top of the container.
- D. Each handler, while mixing pesticides, shall protect the water supply from back-siphoning pesticide mixtures.

R3-3-1006. Decontamination and washing facilities

- A. An employer shall provide a change area for any employee who mixes, loads, applies or otherwise handles pesticides.
- B. Potable water, soap and towels for routine washing of hands and face, and for emergency washing of the entire body, shall be available for all employees at the worksite where they mix or load pesticides. A minimum of five gallons of water shall be present at the beginning of each workday for one employee and a minimum of ten gallons for two or more employees. This water shall be stored separate from that used for mixing with pesticides unless the tank holding water for mixing with pesticides is equipped with backflow prevention devices to prevent backflow of pesticides into the water. Any other available supply of potable water within 1/4 mile of the mixing and loading site is satisfactory for the purposes of this subsection.
- C. Use of non-potable irrigation water is permitted for emergency decontamination procedures.

R3-3-1006. Agricultural Emergency

- A. Any grower, a group of growers, or designee may request the Assistant Director for an agricultural emergency.
- B. Possibility of agricultural emergency.
 - 1. If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:
 - a. The cause of the emergency.
 - b. The area where the emergency may occur.
 - c. An explanation of why early entry is necessary.
 - d. Why other methods cannot be used to avoid the early entry, and
 - e. The justification that substantial economic loss will occur.
 - 2. The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists within 4 hours of receiving the information.
 - 3. If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial of the agricultural emergency.
 - 4. If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately

and provide the Assistant Director with written evidence of the emergency within 5 days. The Assistant Director shall, within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.

C. Occurrence of agricultural emergency.

- 1. If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department orally the next business day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:
 - a. The cause of the emergency.
 - b. The area where the emergency occurred.
 - c. A brief explanation of why early entry was necessary.
 - d. Why other methods could not be used to avoid the early entry, and
 - e. The justification that substantial economic loss would have occurred.
- 2. If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions whether the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial.
- 3. The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party confirming or denying the request for the agricultural emergency.

R3-3-1007. Personal protective measures

- A. An employer shall provide clean outer clothing, such as coveralls and chemical resistant boots or overshoes, daily for each mixer, loader, applicator or other employee who handles Toxicity Category I or restricted-use pesticides and shall provide for cleaning of the clothing after any day when the employee handles the pesticides.
- B. An employer shall provide all safety equipment required by the pesticide product labeling and provide for its cleaning after each day's use. The employer shall require that all personal protective equipment be maintained and kept in a clean, specially designated place when not in use. This clothing and equipment shall remain the property of the employer. The requirements of this subsection do not supersede pesticide labeling statements which are more restrictive.
- C. An employer shall provide and require employees to wear splash resistant goggles or face shields appropriate to safeguard against pesticide exposure when engaged in:
 - 1. Mixing and loading activities;
 - 2. Adjusting, cleaning or repairing contaminated mixing, loading or application equipment;
 - 3. Ground application activities using hand-operated or vehicle-mounted or towed equipment except when:
 - a. Injecting or incorporating pesticides into soil; or
 - b. Vehicle-mounted spray nozzles are located below and behind the employee and the nozzles are directed downward.

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- D.** Respiratory protection shall be approved by the National Institute of Occupational Safety and Health (NIOSH) or the Mine Safety and Health Administration (MSHA) or the U.S. Department of Agriculture (under the provision of 30 CFR 11, revised July 1, 1988, pages 18 thru 82, which is incorporated herein by reference and on file with the Office of the Secretary of State) for the specific chemical and exposure condition. The employer shall change all respirator filter pads and cartridges in the manner and with the frequency recommended by the manufacturer but in any event, the filters and cartridges shall be changed after not more than eight hours of actual use. If respiratory protection is required, a full face respirator meets the requirements of this subsection.
- E.** For all Toxicity Category I and restricted-use pesticides, and for any other pesticide where the product label states "avoid contact with skin," "do not get on skin," or a similar statement, employees shall wear chemical-resistant gloves when engaged in:
1. Mixing and loading activities;
 2. Adjusting, cleaning or repairing contaminated mix, load and application equipment;
 3. Hand application activities including use of hand-held equipment.
- If a specific type of glove is not specified on a product label, gloves made of rubber, neoprene or other chemical-resistant material that provides equivalent or better protection from the pesticide being handled shall be used.
- F.** If use of gloves is required by subsection (E), the employer shall provide employees with clean gloves each workday. Clean gloves shall be either:
1. Unused gloves;
 2. Previously used gloves which have been thoroughly washed in soap and water.
- G.** If labeling specifies the use of waterproof or chemical-resistant pants and coat or a rain suit, an employer shall provide and require the use of chemical-resistant protective clothing that covers the torso, head, arms, hands, legs and feet. An employee shall not be required to use protective clothing when conditions such as temperatures over 905 Fahrenheit, humidity or length of time required to complete a task could cause heat exhaustion or other heat-related illnesses. Employees working in the following situations are not required to wear chemical-resistant full-body protective clothing unless the pesticide product labeling specifies otherwise:
1. Employees mixing and loading pesticides through a closed system;
 2. Employees working as applicators while in enclosed cabs.
- H.** If natural light in a mixing/loading area is not adequate to allow an employee to read the label and work in a safe manner, an employer shall provide sufficient artificial light in such areas so that employees can safely perform these activities.
- I.** An employer shall keep equipment used for mixing, loading or applying pesticides in good repair and safe to operate. The Director or his designated agent may inspect at any reasonable time equipment used in mixing, loading and application of pesticides. An employer shall provide for the repair or alteration of equipment with any safety defect to remove the hazard before further use.
- J.** All openings on tanks used for mixing or applying Toxicity Category I or restricted-use pesticides shall be equipped with covers that will prevent splashes and spills. Each tank with a

capacity of more than 49 gallons that is used to mix or apply any liquid mixture derived from a Toxicity Category I or restricted-use pesticide shall have either:

1. A translucent tank or a properly functioning means to indicate externally the internal liquid level in the tank;
 2. A device on the tank or filler hose nozzle that will automatically stop the filling operation before the pesticide liquid mixture spills over the top.
- K.** If closed systems are utilized, personal protective equipment is not required unless the pesticide product labeling specifies otherwise.
- L.** Any employer who gives pesticide-contaminated clothing or equipment to another person for laundering or cleaning shall inform such person of the pesticide contamination so that such person may take measures to protect himself from exposure to the pesticide contamination.

R3-3-1007. Violations and Civil Penalties

- A.** Serious violations. The base penalty for any serious violation is \$500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. §§ 3-3113 and 3-3114.
- B.** Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors prescribed in A.R.S. § 3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

VIOLATION GRAVITY FACTOR

(1 - lowest; 4 - highest)

VIOLATION	GRAVITY
Central Posting	1 - 2
Training	1 - 4
Decontamination	1 - 4
Personal Protective Equipment	1 - 4
Pesticide Applications and Notice	1 - 4
Pesticide Application Restrictions	2 - 4
Other Requirements	1 - 4

- C.** Size of business. The Assistant Director shall use:
1. The maximum number of employees at any 1 time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or
 2. A site-specific employee count, if the violation does not endanger employees at other locations of the business; or
 3. The number of persons trained by a trainer during the previous 12 months that violate the training provisions of this Section.

SIZE-OF-BUSINESS

Size Category	Number of Employees or Number of People Trained
I	1-10
II	11-75
III	76-150
IV	More than 150

- D.** Base penalty. The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

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BASE PENALTY

Gravity Factor	I	II	III	IV
1	\$250	\$300	\$350	\$400
2	300	350	400	450
3	350	400	450	500
4	500	500	500	500

E. Combined or group violations. The Assistant Director may combine or group violations.

1. Violations may be combined and assessed 1 penalty if the violation does not cause any immediate danger to public health or safety or damage to property.

EXAMPLE: 8 workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only 1 training penalty being assessed against the employer.

2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity.

EXAMPLE: Two crews from the same company are engaged in an improper handling activity and 1 crew is using a pesticide with a "danger" signal word, (skull and cross bones) while the other crew is using a pesticide with a "warning" signal word. This situation may result in the employer being assessed 1 penalty based on the penalty for the "danger" (skull and cross bones) violation.

F. If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. §3-3114.

R3-3-1008. Employees working alone; conditions

A. An employee is permitted to work alone with a pesticide in Toxicity Category I or restricted use pesticides during daylight hours only when arrangements have been made for the employee to make personal, radio or telephone contact with the employer or the employer's designee at intervals not exceeding two hours.

B. An employee is permitted to work alone with a pesticide in Toxicity Category I or restricted use pesticides during night-time hours only when arrangements have been made for the employee to make personal, radio or telephone contact with the employer or the employer's designee at intervals not exceeding one hour.

C. A pilot, mixer/loader and flagger team are deemed to be working together. In the case of two ground applicators working in the same field, no additional person is necessary if the applicators can see each other's application vehicles.

D. This Section does not apply to government personnel involved in inspecting, testing or sampling pesticides as part of their official duties.

R3-3-1008. Penalty Adjustments

A. The Assistant Director shall assign an appropriate number of points for each of the following 5 factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.

1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.

2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.

3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used in assessing a penalty.

BASE ADJUSTMENT FACTORS

Pesticide

Signal word danger with skull and crossbones 5

Signal word danger 4

Warning 3

Caution 2

Indirect relation to the violation 1

Harm to Human Health

Actual injuries or temporary reversible illness resulting in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours) 2

Actual (doctor care required, less than 8 hours) 6

Minor supportive care only 2 - 4

Consequence potential 1 - 2

No relationship found 0

Compliance History

One or more violations in the previous 12 months 4

One or more violations in the previous 24 months 3

One or more violations in the previous 36 months 1

No violation history 0

Culpability

Knowing or should have known 4

Negligence 2

Neither 0

Good Faith 0 - -2

B. The Assistant Director may reduce the base penalty for a nonserious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

FINAL PENALTY CALCULATION

	Nonserious Violation	Serious Violation
Number of Points	Penalty Adjustment	Penalty Adjustment
3 or below	Base -80%	Base Penalty
4	Base -65%	Base + 10%
5	Base -50%	Base + 20%
6	Base -35%	Base + 30%
7	Base -20%	Base + 40%
8	Base -5%	Base + 50%
9	Base Penalty	Base + 60%
10	Base + 20%	Base + 70%
11	Base + 35%	Base + 80%
12	Base + 50%	Base + 90%
13	Base + 65%	Base + 100%
14	Base + 80%	Base + 100%
15 or more	Base + 100%	Base + 100%

EXAMPLE:

A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection: (1) No training for 35 seasonal

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workers on the harvest crew; (2) No available decontamination supplies; (3) No safety poster at the central posting location; (4) No emergency telephone number posted, and no medical facility location posted at the central posting location; (5) No posted pesticide application information at the central posting location.

Step 1. Use the *Violation Gravity Factor* table to determine the gravity of the violation.

- | | |
|--|--|
| (1) Training, 1-4 | 2 points, all 35 workers are combined; |
| (2) Decontamination, 1-43 points, no supplies were available within the prescribed distance and it has been 25 days since the most recent application; | |
| (3) - (5) Central Posting, 1-2 | 1 point, since the violations concerns the same factor, they are combined. (There is evidence that the old poster blew away and the pesticide application information is kept available in the secretary's desk, but it is not 'readily' available.) |

Step 2. Use the *Size of Business* table to determine the size category.

75 employees falls into the size category II;

Step 3. Use the *Base Penalty* table to determine the base penalty. Use column II based on the *Size of Business* determination from step 2.

- Violation 1, with a gravity factor of 2, equals a base penalty of \$350;
Violation 2, with a gravity factor of 3, equals a base penalty of \$400;
Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of \$300.

Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

Compliance History. This farm has no previous violation history. 0 points.

Culpability. The supervisor attended a "train-the-trainer" course 2 years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the first 2 violations the supervisor should have known about the requirements. For the last 3 violations, the central posting sight was not checked frequently enough to ensure compli-

ance. For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.

Good Faith. The inspector came back 5 days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance. Since the employer corrected the violations quickly. -1 point.

Step 5. Add the points for each violation from Step 4.

Violation 1 1+1+0+4+-1=5

Violation 2 1+1+0+4+-1=5

Violations 3, 4, 5 1+1+0+2+-1=3

Step 6. Using the *Final Penalty Calculation* table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for nonserious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.

Violation 1	5 points	Base -50% =	350-
175=\$175			
Violation 2	5 points	Base -50% =	400
200=\$200			
Violations 3, 4, 5	3 points	Base -80% =	300 -240=\$
60			

Adjusted Penalty Total \$435

R3-3-1009. Failure-to-Abate

- A. The Director shall issue a notification of failure-to-abate an alleged violation if a violation has not been corrected as specified on the citation. Failure-to-abate penalties, pursuant to A.R.S. § 3-3113(E), shall be applied if an employer or handler has not corrected a previous cited violation that is a final order of the Director. When determining the appropriate penalty amount, the Director shall take into consideration a good faith effort to abate the violation.
- B. If a person does not file a timely notice of contest within the 30-day contest period, the citation and proposed penalties shall be a final order of the Director.
- C. If a person files a notice of contest pursuant to A.R.S. § 3-3116(A), the period for the abatement shall not begin, as to those violations contested, until the day following the entry of the final order by the Director affirming the citation. If the person contests only the amount of the proposed penalty, the person shall correct the alleged violation within the prescribed abatement period.

R3-3-1010. Calculation of Additional Penalties For Unabated Violations

- A. The Assistant Director shall calculate a daily penalty for unabated violations if failure to abate a serious or nonserious violation exists at the time of reinspection. That penalty shall not be less than the penalty for the violation when cited, except as provided in subsection (C).
- If no penalty was initially proposed, the Assistant Director shall determine a penalty. In no case shall the penalty be more than \$1,000 per day, the maximum allowed by A.R.S. § 3-3113(E).
 - The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except for the following: The number of days unabated shall be counted from the day following the abatement date specified in the final order. It shall

include all calendar days between that date and the date of reinspection, excluding the date of reinspection.

- B.** When calculating the additional daily penalty, the Assistant Director shall consider the extent that the violation has been abated, whether the employer has made a good faith effort to correct the violation, and it is beyond the employer's control to abate. Based on these factors, the Assistant Director may reduce or eliminate the daily penalty.

EXAMPLE: If 3 of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in subsection (A) without regard to any partial abatement), may be reduced by the percentage of the total violations which have been corrected, in this instance, 3 of 5, or 60%.

R3-3-1011 Repeated or Willful Violations

- A.** The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last 3 years from the date of notice.

- 1.** The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).

- 2.** The penalty for a repeated serious violation shall be multiplied 5 times for the first repeated violation and 7 times if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).

- 3.** The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation, up to the maximum allowed by A.R.S. § 3-3113(A).

- 4.** A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.

- 5.** If the Assistant Director determines, through documentation, that it is appropriate, the penalty may be multiplied by 10, up to the maximum allowed by A.R.S. § 3-3113(A).

- B.** The Assistant Director may adjust the gravity based penalty by a multiplier up to 10 for any willful violation, up to the maximum allowed by A.R.S. § 3-3113(A).

- C.** The Assistant Director shall not allow a reduction for any serious or nonserious willfully repeated violation.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

PREAMBLE

1. Sections Affected

Article 1
R3-4-102
R3-4-102
Table 1

Rulemaking Action

Amend
Renummer
New Section
New Table

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 3-107, 41-1073

Implementing statute: A.R.S. §§ 3-107, 41-1073, 41-1074, 41-1075, 41-1076

3. The effective date of the rules:

October 8, 1998.

4. A list of all previous notices appearing in the Register addressing the adopted rule:

Notice of Rulemaking Docket Opening: 4 A.A.R. 474, February 13, 1998

Notice of Proposed Rulemaking: 4 A.A.R. 1661, July 10, 1998

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 124
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420

6. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. § 41-1072 et seq., requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission require by law, but it does not include a license required solely for revenue purposes. The rules must specify:

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1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);
2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and
3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)

The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license or certification is being issued (substantive review).

The Department researched our licenses, certifications, permits and registrations to determine whether they constituted a "license" as considered by A.R.S. § 41-1073. R3-4-102 contains the final listing, in the form of a matrix, of those licenses which fall under the requirements of the new law.

According to legislation, time-frames are required only for licenses that require an application for processing. A.R.S. § 41-1073 prescribes that . . . *[n]o later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.* The definition of "overall time-frame" is . . . *the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license.* The Department has examined our licenses and determined which licenses require an application for issuance, and which licenses are summarily issued upon request. The Department does issue some licenses based upon review of an application, and under this statute has developed time-frames. However, where the Department does not require an application for issuing a license, which includes most quarantine approvals, the Department is not required to develop time-frames.

The term "application" is not defined in the administrative procedures statutes. However, an application is generally a written request in which the information provided is used in determining if the applicant meets the necessary qualifications for a license. This also has served as a guide when reviewing the licenses that require an application.

The language of A.R.S. §41-1073(C) was carefully considered in reviewing and establishing the time-frames in R3-4-102. In particular, potential impact of delay on the regulated community is weighed against the resources of the agency. Some reviews are done from our regional offices by inspectors assigned to field work. This allows a more responsive approach to local needs, but also means there are less personnel doing more varied types of work. The majority of our licenses, however, are issued from the central office where supervisors and managers are required to give final approval. For this reason the time-frames given are "maximum", to allow for situations where the license application may have to be sent to the central office for approval, or where the assigned person may not be available for licensing duties. It is extremely rare that the fully allotted time-frames will be used; particularly in cases when the administrative completeness review is all that is necessary. In this case, if all the required documentation and information is submitted, the license is issued, as there are no other criteria for denial.

The following licenses require more time in the substantive review period after the application has been reviewed for completeness.

R3-4-218, Cotton Boll Weevil Pest, R3-4-219, Citrus Fruit Surface Pest, R3-4-226, Scale Insects Pests, and R3-4-240, Plum Curculio Apple Maggot do not require an application, however a written request is necessary to determine if the applicant meets the necessary qualifications for a permit. The applicant generally calls the program manager to determine whether specific plants may be moved into or through the state. The program manager then requests the applicant to send a letter outlining the particulars of the request.

R3-4-220, Citrus Nursery Stock Pests establishes the entry requirements for nursery stock. After an application is received, the root stock registration numbers are checked to verify that they have been found free of tristessa and other plant pathogens. This process may take some time, depending upon the workload of Department personnel.

R3-4-501, Colored Cotton establishes the requirements for producing colored cotton and provides strict regulations to protect the existing cotton industry from potential colored fiber and seed contamination. This rule specifies that *[a]ll producers who intend to grow colored cotton shall register in writing with the Department no less than 30 days prior to the cotton planting dates for the cultural cotton zones prescribed in R3-4-204.* The Department uses the time period before the planting date to respond to the applicant if there are any questions concerning the application, and to verify the planting location.

R3-4-303, Special nursery certification: ozonium root rot inspection explains the inspection procedure used to determine whether ozonium root rot is present in the soil. The applicant may apply for 3 different types of certifications:

(1) The Method of Growing certification is verified by an inspection that the applicant's plants are separated from the soil either by a raised platform, such as a bench, or some type of buffer, such as rocks, between the plants and the ground.

(2) Indicator Crop Planted on Applicant's Property. The applicant's property has 4 years to be certified free from ozonium root rot for a total of 3 years. (Does not have to be consecutive years) The Department 1st provides the applicant with a list of possible crops that qualify for ozonium root rot testing. After the crop is planted, the Department inspects the crop 3 times during the yearly growing season. If no ozonium root rot is found, the 1st year is established. Within the 4 year period, if some of the plants in a specific field do not live, those fields will fail certification and the applicant may replant the indicator crop. Meanwhile the Department will inspect the applicant's remaining fields 3 times each year to continue verification of ozonium root rot-free fields.

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The substantive time-frame reflects an additional 10-month period that allows for early application. For example: If the applicant applies for a certification in September, generally the 1st inspection won't take place until the growing season begins the following July or August. This early application sets up the possibility that 10 months could pass where no type of review can be done. The following chart provides 4 possible examples for the substantive review time-frame.

YEAR	1	2	3	4	Total Passed Inspections (3 yrs. Req.)
All/Individual Fields	Pass	Pass	Pass		3 years
Individual Fields	Pass	Pass	Fail	Pass	3 years
Individual Fields	Pass	Fail	Pass	Pass	3 years
Individual Fields	Pass	Fail	Fail	Pass	2 years

At the end of 4 years, if the applicant's fields do not meet a total of 3-years ozonium root rot-free status, the applicant may reapply for certification for the failed fields and submit another application and certification fee.

(3) Indicator Crop Planted in Surrounding Area. If the surrounding property is already planted with indicator crops, the applicant may request the Department to certify that the applicant's property is ozonium root rot free. This free period must total 2 years. The same types of circumstances that apply to example (2), such as early application, and 3 inspections per year apply to this inspection procedure. If the surrounding area is planted in rotating crops such as cotton and corn the following chart provides 4 possible examples for the substantive review time-frame.

YEAR	1 Cotton	2 Corn	3 Cotton	4 Corn	5 Cotton	Total Passed Inspections (2 yrs. Req.)
All/Individual Fields	Pass		Pass		----	2 years
Individual Fields	Pass		Fail		Pass	2 years
Individual Fields	Fail		Pass		Pass	2 years
Individual Fields	Pass		Fail		Fail	1 year

Other Certification Inspections Nursery inspection. This inspection is used primarily for rose certification. After receipt of the application, the inspector will inspect the fields 1 time during the growing season (spring/summer), and 1 time during the digging season (winter) when the grower is selling the crop. If no pests are found, or the infected plant is destroyed, the certification is approved. When the application is received several months before the growing season, no inspection will occur and the application will be held. For example: If an application is received in November, during the current digging season, the Department will not make the first inspection until the growing season for which the application has been submitted (April through September). The first inspection will depend upon the number of applications received, the weather, and the total acreage. Based on these criteria, the date of the first inspection could be anywhere from 6 to 10 months. Although 2 inspections are required, the grower will receive certification before the shipping season, and before the second inspection, so that the crop can be marketed. If a pest is found during the second inspection, the certification may be revoked, suspended, or, if the grower destroys the infected plant the certificate will not be impacted.

Other states and foreign countries require certification that plants, seeds, and fruits are clean and free from pests and diseases. Phytosanitary field inspections provide that certification. When an applicant inquires whether a foreign country or another state requires specific standards for their product, a preapplication determines whether that applicant qualifies for, or needs, the field inspection. After receiving the phytosanitary application the program manager will review specific country requirements and notify the inspector to inspect the plants. The length of time to approval of the phytosanitary certification depends upon the type of crop grown and whether it is necessary to inspect the field once or 3 times during the growing season.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

It is not anticipated that the adoption of this rule will have any impact on private industry, small business, or consumers. This rule action provides the codification of the time-frames currently observed by the Plant Services Division of the Arizona Department of Agriculture. The Department does not anticipate that penalties will be incurred for noncompliance with the over-all time-frames.

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

Currently, when incomplete applications are received, the individual program either obtains the missing information by telephone, or sends the applicant a letter explaining what information is missing. This rule simply codifies the time-frames and procedures already observed by the Plant Services Division.

The Division issued 13,453 licenses requiring time-frames in 1997. The estimated costs for training employees to understand the time-frame procedure, how to calculate the various review periods when additional information is requested, and the

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actual paperwork necessary to track each license will cost between \$1.25 to \$1.59 per application, depending upon the program. If the same number of licenses is issued each year, the Division will have a \$17,084.21 yearly expenditure for administering these rules.

The Native Plant program issues approximately 1,500 licenses per year and very seldom requests additional information. The time involved in tracking the date received and the date the licenses is granted or denied will be minimal. No cost was included in the yearly expenditure for this program.

The Department does not anticipate that penalties will be incurred for noncompliance with the overall time-frames.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any businesses applying for a license will follow current procedures and practices and no additional cost or benefits shall occur. The proposed rules will provide an intangible benefit for these businesses by identifying the time-frames in which the Division will approve or deny licenses.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public shall follow current procedures and practices when applying for licenses and no additional cost or benefits shall occur. Consumers may also receive an intangible benefit by the identification of specific time limits for processing licenses.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues unless the Department does not grant or deny a license within the established time-frames and is required to refund fees and pay a penalty.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Laws 1998, Ch. 57, effective August 21, 1998 amending A.R.S. § 41-1073(D), eliminates the requirement to provide a rulemaking time-frame for any license taking 7 days or less to issue. The Seed Dealer and Seed Labeler Licenses (A.R.S. § 3-235) are granted or denied within 2 days, the pre-application portion of the Phytosanitary Field Inspection (A.R.S. § 3-201.01 and 3-217) is granted or denied within 5 days, and the Shipment Inspection for Nursery Products (A.R.S. §§ 3-201.01 and 3-217) is granted or denied within 2 days, they have been removed from this rulemaking.

The location of the time-frame matrix was changed from subsection (D) to Table 1. The overall time-frame for Ozonium Root Rot Inspection, Indicator Crop Planted on Applicant's Property, was incorrect and changed to 4 years, 7 days, as indicated by the addition of the administrative completeness review and the substantive completeness review. The overall time-frame for the Phytosanitary Application was incorrectly added and has been changed to 150.

Subsection (B)(3), "may" was changed to "shall" and "unless the applicant requests an extension" was added after "file."

Subsection (C)(1) was changed for having the application "withdrawn" to "denying" the license if the applicant fails to provide the information requested.

Format and clarification changes were made at the request of G.R.R.C. staff. No substantive changes were made.

10. A summary of the principal comments and the agency response to them:

None.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

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TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 1. GENERAL RULES AND DEFINITIONS
PROVISIONS

Section

~~R3-4-102.~~ R3-4-101. Definitions

~~R3-4-102.~~ Licensing Time-frames

~~Table 1.~~ Time-frames

ARTICLE 1. GENERAL RULES AND DEFINITIONS
PROVISIONS

~~R3-4-102.~~ R3-4-101. Definitions

~~R3-4-102.~~ Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The adminis-

trative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Table 1. Time-frames (Calendar Days)

<u>License</u>	<u>Authority</u>	<u>Administrative Completeness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Completeness Review</u>	<u>Response to Additional Informa- tion</u>	<u>Overall Time-frame</u>
<u>QUARANTINE</u>						
<u>Cotton Boll Weevil Pest</u>	<u>A.R.S. 3-201.01 R3-4-218</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Citrus Fruit Surface Pest</u>	<u>A.R.S. 3-201.01 R3-4-219</u>	<u>14</u>	<u>14</u>	<u>60</u>	<u>30</u>	<u>44</u>
<u>Citrus Nursery Stock Pests</u>	<u>A.R.S. 3-201.01 R3-4-220</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Lettuce Mosaic Pest</u>	<u>A.R.S. 3-201.01 R3-4-233</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Noxious Weeds Regulated and Restricted Prohibited</u>	<u>A.R.S. 3-201.01 R3-4-244 R3-4-245</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Scale Insects Pests</u>	<u>A.R.S. 3-201.01 R3-4-226</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>

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Plum Curculio Apple Maggot	A.R.S. 3-201.01 R3-4-240	14	14	60	30	74
Colored Cotton	A.R.S. 3-205.02 R3-4-501	14	0	0	0	14
<u>NURSERY</u>						
Ozonium Root Rot Inspection •Method of Growing •Indicator Crop Planted On Applicant's Property •Indicator Crop Planted In Surrounding Area	A.R.S. 3-201.01 A.R.S. 3-217 R3-4-303	7 7 7	14 14 14	30 4 yrs 5 yrs	14 14 14	37 4yrs, 7 days 5yrs, 7 days
Other Certification Inspections •Nursery Inspection	A.R.S. 3-201.01 A.R.S. 3-217	30	14	1 yr	14	1 yr, 30 days
Phytosanitary Field Inspection •Phytosanitary Application	A.R.S. 3-201.01 A.R.S. 3-217	30	7	120	7	150
<u>STANDARDIZATION</u>						
Experimental Containers	A.R.S. 3-487 R3-4-740	7	0	2	0	9
Experimental Containers	A.R.S. 3-445 R3-4-814	7	0	2	0	9
Citrus Fruit Dealer, Packer or Shipper License	A.R.S. 3-449	10	14	10	14	20
Fruit and Vegetable Dealer, Packer or Shipper License	A.R.S. 3-492	10	14	10	14	20
<u>ARIZONA NATIVE PLANTS</u>						
Notice of Intent Confirmation Notice of Intent	A.R.S. 3-904 R3-4-602	7	14	7	14	14
•Qualifications for Salvage Assessed Native Plant Permits •Salvage Restricted Native Plant Permits •Scientific & Educational Permits	A.R.S. 3-906 R3-4-611 R3-4-610	5 5 14	14 14 14	5 5 14	14 14 14	10 10 28
Blue Seal Permits	A.R.S. 3-906 R3-4-610	5	14	5	14	10
Qualifications for Annual Permits For Harvest-Restricted Native Plants	A.R.S. 3-907 R3-4-612	5	14	5	14	10
<u>HAY BROKER</u>						
Hay Broker License	A.R.S. 3-2712	5	5	5	5	10

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TITLE 4. PROFESSIONS, AND OCCUPATIONS

CHAPTER 3. STATE BOXING COMMISSION

PREAMBLE

1. Sections Affected
R4-3-412.01
Table 1
- Rulemaking Action
New Section
New Table
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 5-224
Implementing statute: A.R.S. § 41-1073
3. The effective date of the rules:
October 8, 1998.
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 4 A.A.R. 1017, May 1, 1998.
Notice of Proposed Rulemaking: 4 A.A.R. 1378, June 19, 1998.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: John H. Montañio, Executive Director
Address: State Boxing Commission
1400 West Washington, Room 210
Phoenix, Arizona 85007
Telephone: (602) 542-1417
Fax: (602) 542-1458
6. An explanation of the rule, including the agency's reasons for initiating the rule:
A.R.S. § 41-1072 et seq. requires agencies to adopt rules establishing time-frames for the granting or denial of licenses. A.R.S. § 41-1001(11) defines a "license" as *the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes*. The rules must specify:
 1. An "administrative completeness time-frame" (the time it takes the agency to determine if an application is complete);
 2. A "substantive review time-frame" (the time it takes the agency to review the application and determine if the applicant meets the substantive criteria for licensure); and
 3. An "overall time-frame" (a combination of the administrative completeness and substantive review time-frames.)The law also requires an agency to notify applicants within the established time-frames, whether the application is complete (administrative completeness) and whether a license is being issued (substantive review).
The licenses issued by the Commission that fall under the requirements of the new law are contained within Table 1. The administrative and substantive time-frames allow for possible delays in fingerprinting information, financial requirements and verification, scheduling Commissioner meetings, or establishing sparing sessions to verify a boxer's general physical condition. In certain circumstances, when a boxer is well known within the boxing community, the boxer may choose to have a medical examination the evening of the fight — extending the administrative time-frame to the maximum. Except for this occurrence, it is extremely rare, that the fully allotted time-frames will be used. If all the required documentation and information is submitted, the license is generally issued.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business, and consumer impact:
It is not anticipated that the adoption of this rule will have a significant impact on government, or any impact on private industry, small business, or consumers. This rule action provides the codification of the time-frames currently observed by the State Boxing Commission.
A. *Estimated Costs and Benefits to the State Boxing Commission.*

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Currently, when incomplete applications are received, the Commission obtains the information when the application is brought in or by telephone when the application is mailed. In cases where financial or medical information is needed the applicant is noticed in a letter explaining what information is missing. This rule simply codifies the time-frames and procedures already observed by the Commission. The Commission will assume additional costs to notice every applicant who does not provide a complete application. However, it is unknown what those costs may be.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Any person applying for a license will follow current procedures and practices and no additional cost shall occur. The proposed rule will provide an intangible benefit, however, for an applicant by identifying the time-frames in which the Commission will approve or deny the license.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The following minor editing changes were made at the request of the Office of the Secretary of State.

Page 1: Commerce was deleted from Title 4's heading.

Page 1, question 4, third line: "d" was added to the word require.

Page 5: Commerce was deleted from the Title heading.

Page 5: Time-Frames was changed to "Time-frames."

Page 6, subsection (B)(1), first line: a space was added between the word "subsection" and (D).

Page 6, second line: a space was deleted before the comma after the word "applicant."

Page 7, The location of the time-frame matrix was changed from subsection (D) to Table 1.

At the request of G.R.R.C. staff, minor grammatical and clarifying changes were made to the rule and:

Page 6, subsection (B)(3), "may" was changed to "shall" and "unless the applicant requests an extension" was added after "file."

Page 7, Mention of "boxers' seconds" was inadvertently left off the individuals required to obtain a license and has been added to Table 1.

10. A summary of the principal comments and the agency response to them:

None

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted as an emergency rule:

No

14. The full text of the rules follows:

TITLE 4. PROFESSIONS, AND OCCUPATIONS

CHAPTER 3. STATE BOXING COMMISSION

ARTICLE 4. ADMINISTRATION

Section

R4-2-412.01. Licensing Time-frames

Table 1. Time-frames

ARTICLE 4. ADMINISTRATION

R4-3-412.01. Licensing Time-frames

A. Overall time-frame. The Commission shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Commission receives the application. The Commission shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant, the license application shall be considered complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Commission mails the notice of missing information to the applicant until the date the Commission receives the information.

3. If the applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.

1. If the Commission makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Commission mails the request until the information is received by the Commission. If the applicant fails to provide the information identified in the written request the Commission shall consider the application withdrawn.

2. The Commission shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Table 1. Time-frames (Calendar days)

<u>License</u>	<u>Statutory Authority (Title 4)</u>	<u>Administrative Completeness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Completeness Review</u>	<u>Response to Additional Information</u>	<u>Overall Time-frame</u>
Promoter, Matchmaker, Corporation, Manager, Judge, Referee	5-228 R4-3-412	35	10	30	7	65
Boxer, Boxers' Seconds, Trainer, Ring Announcer, Timekeeper, Physician	5-228 R4-3-412	10	10	30	14	40

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 8: DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION**

PREAMBLE

1. Sections Affected

Article 9
R9-8-901
R9-8-902
R9-8-903
R9-8-904
R9-8-905
R9-8-906
R9-8-907

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section

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R9-8-908	New Section
R9-8-909	New Section
R9-8-910	New Section
R9-8-911	New Section
R9-8-912	New Section
R9-8-913	New Section
R9-8-914	New Section
R9-8-915	New Section
R9-8-916	New Section
R9-8-917	New Section
Article 16	Repeal
R9-8-1611	Repeal
R9-8-1612	Repeal
R9-8-1614	Repeal
R9-8-1615	Repeal
R9-8-1616	Repeal
R9-8-1617	Repeal
R9-8-1618	Repeal
R9-8-1619	Repeal
R9-8-1620	Repeal
R9-8-1621	Repeal
R9-8-1622	Repeal
R9-8-1624	Repeal
R9-8-1625	Repeal
R9-8-1626	Repeal
R9-8-1627	Repeal
R9-8-1628	Repeal
R9-8-1629	Repeal
R9-8-1630	Repeal
R9-8-1631	Repeal
R9-8-1632	Repeal
R9-8-1633	Repeal
R9-8-1634	Repeal
R9-8-1635	Repeal
R9-8-1636	Repeal
R9-8-1637	Repeal
R9-8-1638	Repeal
R9-8-1639	Repeal
R9-8-1640	Repeal
R9-8-1641	Repeal
R9-8-1642	Repeal
R9-8-1643	Repeal
R9-8-1644	Repeal
R9-8-1645	Repeal
R9-8-1646	Repeal
R9-8-1647	Repeal
R9-8-1648	Repeal
R9-8-1649	Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(F)
Implementing statutes: A.R.S. §§ 36-104(1)(b)(i), and 36-796.01 through 36-796.05
3. The effective date of the rules:
October 9, 1998.
4. A list of all previous notices appearing in the Register addressing the final rules:
Notice of Rulemaking Docket Opening: 2 A.A.R. 4191, October 4, 1996.
Notice of Proposed Rulemaking: 3 A.A.R. 2338, August 29, 1997.
Notice of Public Information: 4 A.A.R. 563-564, February 20, 1998.
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Richard Cox
Address: Arizona Department of Health Services

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Food Safety and Environmental Services
3815 North Black Canyon Highway
Phoenix, Arizona 85015

Voice: (602) 230-5908

Fax: (602) 230-5817

Or

Name: Kathleen Phillips

Address: Arizona Department of Health Services
1740 West Adams, Rm. # 410
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 542-1289

E-mail: kphillips@hs.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The rules adopted under 9 A.A.C. 8, Article 9, entitled Bedding, contain provisions that:

1. Require the licensing of a person that manufactures, renovates, or treats a bedding under A.R.S. §§ 36-796 through 36-796.08;
2. Set forth the Off-Sale procedure;
3. Set forth standards for filling materials;
4. Require a tag with a description of the product on a bedding manufactured, renovated, or treated in Arizona;
5. Require that the materials used in the manufacture of a new bedding are sanitary, meet industry standards, and are honestly presented; and
6. Require that a bedding containing secondhand material is clean and free of dirt and bacteria.

The current rules, contained in 9 A.A.C. 8, Article 16, entitled Bedding Regulations, were adopted in 1976, have undergone no revision since, and are obsolete. The proposed rules set forth only slightly different procedural requirements for a bedding manufacturer or retailer, and consist mostly of stylistic and grammatical changes in order to comply with current rulemaking style and format requirements.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

A. Persons who are directly affected, bear costs, or benefit:

1. There are approximately 1000 licensees who are owners of bedding manufacturing and renovation factories and bear the cost of complying with the rules.
2. Arizona Department of Health Services bears the cost for the administration and enforcement of bedding requirements and inspection and seizure of substandard bedding.
3. The public benefits from honestly presented bedding products.

B. Cost/benefit analysis:

When used in this summary, minimal means less than \$1,000, moderate means between \$1,000 and \$10,000, and substantial means greater than \$10,000.

1. Arizona Department of Health Services: Substantial. The Department's cost for the preparation of the rule package is substantial. There will be no change in the Department's inspection and enforcement responsibilities. The Department conducts no application inspections, but conducts approximately 10 complaint inspections annually.
2. Governor's Regulatory Review Council and Secretary of State's Office: Moderate. These agencies will incur moderate cost for reviewing and publishing the rule package.
3. Political Subdivisions: None. Political subdivisions are not authorized or mandated to conduct bedding inspections or initiate bedding enforcement actions.
4. Owners of bedding manufacture or renovation factories: Minimal. The costs are for designing and printing bedding product labels.

5. Consumers and public: Consumers and public will have sanitary bedding products that are honestly presented.
6. State revenues: None.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules, (if applicable):**

No substantive changes have been made in the text of the adopted rules from that in the proposed rules. Numerous grammatical, stylistic, and verbiage changes have been made to make the rules more clear, concise, and understandable. The changes include:

1. The word "label" has been replaced by the word "tag" throughout the document to conform with A.R.S. § 36-796.02.
2. All exhibits have been removed from the rules, because they duplicate the requirements already set forth in the body of the rules.
3. The words "pursuant to" have been replaced by the word "under" to conform with the Secretary of State's style requirement.
4. The words "item of bedding" and the word "item" referring to a bedding have been replaced with the words "a bedding" to conform with A.R.S. § 36-796.
5. A new Section R9-8-903, License Application Time-frames, has been added to meet the requirements of A.R.S. §§ 41-1072 through 41-1078. This Section combines the provisions relating to time-frames in Sections R9-8-902 and R9-8-903 of the proposed rules. The rules following the new Section have been renumbered, and the rule numbers referenced in the body of rules have been changed accordingly.

R9-8-901

The definition of "Article" has been deleted. The definition of "Applicant" has been added. The definition of "Bedding establishment" has been changed from "a store or factory where bedding is manufactured, renovated, treated, or sold" to "a store or factory where a bedding is manufactured, renovated, or treated". The definition of "Disinfect" has been changed to mean "to kill bacteria, fungi, and parasites of human significance on the surface of a secondhand bedding by applying a liquid spray containing microbicide, fungicide, and insecticide over the surface of the secondhand bedding". The definition of "Label" has been deleted. The definition of "License" has been changed from "authorization by the Department to manufacture, renovate, treat, or sell bedding" to "authorization by the Department to manufacture, renovate, or treat a bedding". The definition of "Lot" has been deleted. The definition of "Petition" has been added. The definition of "Sterilize" has been changed to mean "to kill all microorganisms and parasites in or on a bedding by either a penetrating chemical or cumulative heat". The definition of "Tag" has been added. The definition of "Treat" has been changed to mean "to clean and disinfect or sterilize a bedding or filling material".

R9-8-902

Subsections A, B, and E referring to the time-frames have been deleted, and the substance of the subsections has been transferred to R9-8-903. Subsections C and D have been renumbered as subsections A and B respectively. In subsection A, the language in the heading has been changed to "An applicant shall complete and submit to the Department a bedding license application form supplied by the Department that contains all of the following information:"; and the language in the list is changed to convert the references from plural to singular. The language of subsection A(1) has been replaced by "The full name and mailing address of the applicant,". In subsection A(7) the word "bedding" has been deleted. In subsection A(8) the phrase "individual completing the application" has been replaced by the word "applicant". In subsection B the phrase "A person with a bedding establishment" has been replaced with the phrase "An applicant intending to operate". Subsection C has been added.

R9-8-903 (Renumbered from R9-8-902)

A separate Section has been added for bedding license and petition application time-frames authorized by R9-8-902 and R9-8-917(B). These time-frames were moved from R9-8-917(B), R9-8-903, and R9-8-917(B).

R9-8-904 (Renumbered from R9-8-903)

Subsection A referring to license application time-frames has been deleted, and the substance of the subsection has been transferred to R9-8-903. Subsections B and C have been renumbered as subsections A and B respectively. The word "The" was added at the beginning of subsections A(1) through A(5). The word "full" was added to subsection A(3). The word "A" was added at the beginning of subsection A(6). Subsection D has been deleted.

R9-8-905 (Renumbered from R9-8-904)

The number "3" in the heading has been changed to the words "the following". Subsection 1 has been deleted because the statute does not require a licence to sell or offer for sale bedding at a retail outlet. Subsections 2 and 3 have been renumbered as subsections 1 and 2. At the end of subsection 1, ", and" has been changed to "; or".

R9-9-906 (Renumbered from R9-8-905)

In Subsection B, the words "in accordance" has been replaced with the words "that complies".

R9-8-907 (Renumbered from R9-8-906)

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In the heading of subsection B, the words "all of" were added, and the word "information" was deleted. The word "The" is added at the beginning of subsections B(1) through B(8), and the words "if known;" have been added to the end of the language in subsections B(2), B(4), B(5) and B(6). In subsection B(2) the word "establishment" has been replaced by the word "owner". In subsection B(3), the phrase "Street address of the bedding establishment" has been replaced by the phrase "Street address where the bedding is located". In Subsection B(8), the words "of any" have been replaced with the words "on the".

R9-8-908 (Renumbered from R9-8-907)

Subsection A has been deleted, because the requirement that the Department prepare an Off-Sale tag is already covered by A.R.S. § 36-796-01(E). Subsections B and C have been renumbered as Subsections A and B respectively. The information on Subsection D has been incorporated within Subsection B, and the language has been modified for clarity. Subsection E has been deleted.

R9-8-909 (Renumbered from R9-8-908)

In Subsection A, the language has been modified for clarity. Subsection B has been deleted because the provision has already been covered by the modified language in Subsection A.

R9-8-910 (Renumbered from R9-8-909)

Subsection A has been deleted because the requirement is already covered by A.R.S. § 36-796.03. The header sentence of subsection B has been changed to "In addition to the prohibited filling materials listed in A.R.S. § 36-796.03, a licensee shall not use a filling material containing any of the following:" and is placed as the header of the Section.

R9-8-911 (Renumbered from R9-8-910)

Subsections A, B, and D have been deleted, and the requirement contained in subsection A has been included in the specific license requirements. Subsections C and E have been renumbered as subsections A and B. The format and language of the Section has been modified for clarity and conciseness.

R9-8-912 (Renumbered from R9-8-911)

The language in Subsection A has been changed to "A person holding a type "M" license shall attach a white tag, no less than 6 square inches in size, to each bedding manufactured by the licensee." Subsection B(3) has been added, and subsequent subsections have been renumbered. The statement in Subsection B(5) has been changed to active voice. Subsections C and D have been deleted.

R9-8-913 (Renumbered from R9-8-912)

The language in Subsection A has been changed to "A type "R" licensee shall attach a red tag, no less than 12 square inches in size, to each bedding manufactured by the licensee that contains any secondhand material." Subsection B is deleted. The information on Subsection C has been incorporated within Subsection A, with subsection A(3) added. The statements in Subsections A(4) and B(2) have been changed to active voice. Subsections D and E are deleted. Subsection F has been renumbered as Subsection B with the modified language "A type "R" licensee shall attach a green tag, no less than 6 square inches in size, to a bedding renovated for the personal use of the bedding's owner." The information in Subsection G has been incorporated within Subsection B, with subsection (B)(5) added. Subsections H and I have been deleted.

R9-8-914 (Renumbered from R9-8-913)

In subsection A, The sentence "A type "R" licensee shall ensure that a yellow label is attached to each article of secondhand bedding sold or offered for sale and bedding renovated or manufactured in whole or in part from secondhand material." has been replaced with the sentence "In addition to a red or green tag required under R9-8-913, a type "R" licensee shall attach a yellow tag, no less than 12 square inches, to each secondhand bedding and each renovated bedding that is manufactured in whole or in part from secondhand material." Subsections B and C have been deleted. Subsection D has been renumbered to subsection B; the words "all of" have been added in the header; the phrase "The name and address of the person for whom the article was treated," was deleted and replaced with the phrase "The license number of the licensee," in subsection (B)(2); and the words "supplied by the licensee" has been added in subsection (B)(4). Subsection E has been deleted. Subsection F has been renumbered as Subsection C, and the words "In addition to the labeling requirements in subsection B" have been added in the beginning of the header. Subsection G has been deleted. Subsection H has been renumbered as Subsection D, and the words "In addition to the labeling requirements in subsection B" have been added in the beginning of the header. The statements in Subsections C(1) and D(1) have been changed to active voice. Subsection I has been deleted.

R9-8-915 (Renumbered from R9-8-914)

Subsection A has been changed to "Except as provided in A.R.S. § 36-796.07, a person shall not sell or offer for sale a bedding containing any secondhand material unless it has been cleaned, disinfected, or sterilized" has been added. Subsection B has been deleted, and the requirement has been moved to R9-8-917(B)(1)(d).

R9-8-916 (Renumbered from R9-8-915)

In subsection A the word "create" has been replaced by the word "maintain", and the phrase "for each article of bedding that the licensee treats." has been replaced by the phrase "for each bedding and filling material that the licensee treats.". Subsections A(2) through A(4) have been deleted. Subsections A(1)(b) through A(1)(d) have been added. Subsection A(2) has been added.

In subsection B the sentence "A treatment record shall be kept for a period of 1 year." was changed to "A licensee shall maintain the treatment record for a period of 1 year from the date of treatment".

R9-8-917 (Renumbered from R9-8-916)

The first paragraph has been designated as subsection A, and subsection (6) has been deleted because the requirement is covered by R9-8-917(B)(1)(d). Headings of subsections 1 through 5 have been deleted, and language has been changed in the body of the subsections to include the information on the deleted headings. Subsection B has been added to provide the process for applying for the approval of alternate treatment method.

10. A summary of the principal comments and the agency responses to them:

No written or oral comments were received by the Department.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

R9-8-909: "1996 Tagging Law Manual", 1996 Edition, pages 17 through 27, published by the International Sleep Products Association, 333 Commerce Street, Alexandria, VA 22314.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL AND INSTITUTIONAL SANITATION**

ARTICLE 9. BEDDING

Section

<u>R9-8-901.</u>	<u>Definitions</u>
<u>R9-8-902.</u>	<u>Bedding License Application</u>
<u>R9-8-903.</u>	<u>Time-frames</u>
<u>R9-8-904.</u>	<u>Issuance of License</u>
<u>R9-8-905.</u>	<u>License Classification</u>
<u>R9-8-906.</u>	<u>License Suspension or Revocation</u>
<u>R9-8-907.</u>	<u>Off-Sale Procedure</u>
<u>R9-8-908.</u>	<u>Off-Sale Tag Requirements</u>
<u>R9-8-909.</u>	<u>Uniform Classification and Description of Filling Materials</u>
<u>R9-8-910.</u>	<u>Prohibited Filling Materials</u>
<u>R9-8-911.</u>	<u>General Requirements for a Bedding Tag</u>
<u>R9-8-912.</u>	<u>Tag and Labeling Required On New Bedding</u>
<u>R9-8-913.</u>	<u>Tag and Labeling Required On Renovated Bedding</u>
<u>R9-8-914.</u>	<u>Tag and Labeling Required On Secondhand Bedding</u>
<u>R9-8-915.</u>	<u>Treatment of Secondhand Bedding</u>
<u>R9-8-916.</u>	<u>Treatment Record</u>
<u>R9-8-917.</u>	<u>Recommended Treatment Methods</u>

ARTICLE 16. BEDDING REGULATIONS

<u>R9-8-1611.</u>	<u>Scope</u>
<u>R9-8-1612.</u>	<u>Legal authority</u>
<u>R9-8-1614.</u>	<u>Definitions</u>
<u>R9-8-1615.</u>	<u>Exceptions</u>
<u>R9-8-1616.</u>	<u>Licenses for manufacture and renovation of bedding</u>
<u>R9-8-1617.</u>	<u>"Off-Sale" tags</u>
<u>R9-8-1618.</u>	<u>Labeling requirements</u>
<u>R9-8-1619.</u>	<u>Official law label requirements</u>
<u>R9-8-1620.</u>	<u>Universal filling material requirements</u>
<u>R9-8-1621.</u>	<u>Oil and grease limitations</u>
<u>R9-8-1622.</u>	<u>Sludge limitation</u>
<u>R9-8-1624.</u>	<u>Universal definitions and labeling requirements</u>
<u>R9-8-1625.</u>	<u>Optional labeling for cotton filling material</u>
<u>R9-8-1626.</u>	<u>Definitions of types of cotton</u>

<u>R9-8-1627.</u>	<u>Labeling requirements—definitions</u>
<u>R9-8-1628.</u>	<u>Down Products</u>
<u>R9-8-1629.</u>	<u>Tolerances</u>
<u>R9-8-1630.</u>	<u>Wool and hair regulations</u>
<u>R9-8-1631.</u>	<u>Man-made fiber regulations</u>
<u>R9-8-1632.</u>	<u>Miscellaneous vegetable fiber regulations</u>
<u>R9-8-1633.</u>	<u>Treatment and cleaning of secondhand bedding</u>
<u>R9-8-1634.</u>	<u>Licenses to apply sterilization, disinfection, or disinfestation treatment</u>
<u>R9-8-1635.</u>	<u>Tests and inspections of treatment equipment</u>
<u>R9-8-1636.</u>	<u>Treatment chamber identification; numbering of lot</u>
<u>R9-8-1637.</u>	<u>Charts</u>
<u>R9-8-1638.</u>	<u>Records</u>
<u>R9-8-1639.</u>	<u>Storage of formaldehyde</u>
<u>R9-8-1640.</u>	<u>Filling materials</u>
<u>R9-8-1641.</u>	<u>Vacuum-chemical method</u>
<u>R9-8-1642.</u>	<u>Dry-heat method</u>
<u>R9-8-1643.</u>	<u>Feather and down method</u>
<u>R9-8-1644.</u>	<u>Wet method</u>
<u>R9-8-1645.</u>	<u>Steam under pressure method</u>
<u>R9-8-1646.</u>	<u>Disinfecting</u>
<u>R9-8-1647.</u>	<u>Treatment and sterilization tags</u>
<u>R9-8-1648.</u>	<u>Molded-latex foam rubber regulations</u>
<u>R9-8-1649.</u>	<u>Violations</u>

ARTICLE 9. BEDDING

R9-8-901. Definitions

In addition to the definitions contained in A.R.S. § 36-796, in this Article, unless otherwise specified:

1. "Applicant" means the following persons requesting a license:
 - a. If an individual, the individual owning the bedding establishment;
 - b. If a corporation, any 2 officers of the corporation;
 - c. If a limited liability company, the designated manager, or if no manager is designated, any 2 members of the limited liability company;
 - d. If a partnership, any 2 of the partners; or

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- e. If a joint venture, any 2 individuals signing the joint venture agreement.
- 2. "Bedding establishment" means a store or factory where a bedding is manufactured, renovated, or treated.
- 3. "Disinfect" means to kill bacteria, fungi, and parasites of human significance on the surface of a secondhand bedding by applying a liquid spray containing microbicide, fungicide, and insecticide over the surface of the secondhand bedding.
- 4. "Labeling" means the handwritten, printed, and graphic information displayed on a bedding tag under A.R.S. § 36-796.02 and the rules contained in this Article.
- 5. "License" means authorization by the Department to manufacture, renovate, or treat a bedding.
- 6. "Manufacture" means to make a bedding using new or secondhand material or a mixture of both new and secondhand material.
- 7. "Petition" means a request for approval of an alternate treatment method.
- 8. "Sterilize" means to kill all microorganisms and parasites in or on a bedding by either a penetrating chemical or cumulative heat.
- 9. "Tag" means a card, flap, or strip attached to a bedding.
- 10. "Treat" means to clean and disinfect or sterilize a bedding or filling material.

R9-8-902. Bedding License Application

- A. An applicant shall complete and submit to the Department a bedding license application form supplied by the Department that contains all of the following:
 - 1. The full name and mailing address of the applicant.
 - 2. The name of the bedding establishment.
 - 3. The street address for the bedding establishment.
 - 4. The telephone number for the bedding establishment.
 - 5. The classification of bedding license requested.
 - 6. The license number of each bedding license held in Arizona or any other state by the applicant.
 - 7. A description of any treatment method the applicant plans to use, and
 - 8. The signature of the applicant and the signature date.
- B. An applicant intending to operate bedding establishments at multiple locations shall submit a completed license application for each location.
- C. An applicant may request the same license number issued to the applicant by a different state. The Department may issue a license with the requested license number, provided the number is not already in use in Arizona.

R9-8-903. Time-frames

- A. This Section applies to a bedding license under R9-8-902 or a petition under R9-8-917.
- B. The overall time-frame described in A.R.S. § 41-1072(2) is 60 days for a bedding license and 30 days for a petition.
- C. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 30 days for a bedding license and 15 days for a petition, and begins on the date the Department receives an application.
 - 1. If any of the application documents is missing or if information on the submitted documents is deficient, the Department shall send to the applicant, by certified mail with return receipt, a written notice that states each deficiency and information and document needed to complete the application. The 30-day time-frame for a bedding license and the 15-day time-frame for a petition for the Department to finish the administrative completeness review are suspended from the postmark date

of the deficiency notice to the applicant until the date the Department receives the deficient information or missing document.

- 2. If all of the documents are submitted and the information on the documents is complete, the Department shall send a written notice of administrative completeness to the applicant.
- 3. If the documents or information are not submitted within 180 days from the postmark date of notice of incompleteness for a bedding license and 90 days for a petition, the Department shall consider the application withdrawn.
- 4. If the Department grants a license or approves a petition during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.
- D. The substantive review time-frame described in A.R.S. § 41-1072(3) is 30 days for a bedding license and 15 days for a petition, and begins on the postmark date of the notice of administrative completeness.
 - 1. For a bedding license, as part of the substantive review, the Department may schedule an inspection that may require more than 1 visit to the establishment.
 - 2. If an applicant or establishment does not meet the requirements of A.R.S. §§ 36-796 through 36-796.08 and this Article, the Department shall provide to the applicant a written notice of nonconformance that states each statute and rule upon which nonconformance is based.
 - a. Within 120 days for a bedding license and 60 days for a petition from the date of receipt of a written notice of nonconformance, the applicant shall submit to the Department additional informational under A.R.S. § 41-1075 that consists of written documentation of the corrections required in the notice of nonconformance. The time-frame for the Department to finish the substantive review is suspended from the date the Department provides the written notice of nonconformance to the applicant until the Department receives documentation of corrections.
 - b. The Department shall issue a written notice of denial as prescribed in A.R.S. § 41-1076, if:
 - i. The applicant does not submit documentation of corrections within the time-frame in subsection (C)(2)(a); or
 - ii. Upon receipt of documentation of corrections from the applicant, the Department determines that the applicant or establishment does not meet the requirements of A.R.S. §§ 36-796 through 36-796.08 and this Article.
 - 3. If the applicant or establishment meet the requirements of A.R.S. §§ 36-796 through 36-796.08 and this Article, the Department shall issue a license to or approve the petition of the applicant.
- D. If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the next business day will be considered the time-frame's last day.

R9-8-904. Issuance of License

- A. A bedding license issued by the Department shall bear the following information:
 - 1. The name of the bedding establishment;
 - 2. The street address of the bedding establishment;
 - 3. The full name of the licensee;
 - 4. The mailing address of the licensee;

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5. The license classification; and
6. A unique identifying number, as determined by the Department.

B. A license issued by the Department is nontransferable.

R9-8-905. License Classification

The Department shall issue the following types of bedding licenses:

1. Type "M" authorizing a person to manufacture a bedding from all new material, for either wholesale or retail sale; or
2. Type "R" authorizing a person to manufacture, renovate, or treat a bedding that contains in whole or in part secondhand material, for wholesale or retail sale.

R9-8-906. License Suspension or Revocation

A. The Department may suspend or revoke a bedding license if the Department determines that the licensee has:

1. Violated the rules of this Article or the provisions of A.R.S. §§ 36-796 through 36-796.08, or
2. Provided false information on a license application.

B. The Department shall serve notice that complies with A.R.S. § 41-1092.04 of a pending suspension or revocation action to a licensee.

C. A license revocation or suspension hearing shall be conducted by the Office of Administrative Hearings under A.R.S. Title 41, Chapter 6, Article 10.

R9-8-907. Off-Sale Procedure

A. The Department shall issue an Off-Sale order suspending the sale or potential sale of a bedding that violates the rules of this Article or the provisions of A.R.S. §§ 36-796 through 36-796.08.

B. An Off-Sale order shall contain all of the following:

1. The date of issue;
2. The name of the bedding owner, if known;
3. The street address where the bedding is located;
4. The name of the licensee, if known;
5. The mailing address of the licensee, if known;
6. The license number of the licensee, if known;
7. The specific reason for the Off-Sale order; and
8. The identifying number on the Off-Sale tag attached to a bedding under subsection (C).

C. Under A.R.S. § 36-796.01(E), a Department representative shall use a rubber, plastic, or metal cord to attach an Off-Sale tag to a bedding.

D. An Off-Sale tag shall not be defaced, altered, or concealed from view.

E. An Off-Sale tag shall be removed from a bedding only as provided in subsection (F).

F. A bedding ordered Off-Sale shall not be sold or offered for sale until:

1. A Department representative issues a Release for Sale order and removes the Off-Sale tag, or
2. The Department sends a Release for Sale order, by certified mail, instructing the licensee or bedding owner to remove the Off-Sale tag.

R9-8-908. Off-Sale Tag Requirements

A. An Off-Sale tag shall measure no less than 12 square inches in size.

B. The labeling on an Off-Sale tag shall comply with the general requirements contained in R9-8-911(A) and bear all of the following:

1. A unique identifying number, as determined by the Department;
2. The statements:

a. "THIS BEDDING SHALL NOT BE SOLD BECAUSE IT DOES NOT COMPLY WITH THE BEDDING ACT OF THE STATE OF ARIZONA"; and

b. "THIS TAG SHALL BE REMOVED ONLY AS PROVIDED IN A.A.C. R9-8-907(F)";

3. The description of the bedding;

4. The signature of the Department representative; and

5. The date that the Off-Sale tag is signed by the Department representative.

R9-8-909. Uniform Classification and Description of Filling Materials

A manufacturer or renovator shall describe a filling material using only the terms, words, and phrases adopted by the Association of Bedding and Furniture Law Officials in the "1996 Tagging Law Manual" (1996 Edition), pages 17 through 27, published by the International Sleep Products Association, 333 Commerce Street, Alexandria, VA, 22314, incorporated by reference, and on the file with the Department and the Office of the Secretary of State. This incorporation by reference includes no future editions or amendments.

R9-8-910. Prohibited Filling Materials

In addition to the prohibited filling materials listed in A.R.S. § 36-796.03, a licensee shall not use a filling material containing any of the following:

1. Animal or insect excrement;
2. Animal skin;
3. Decayed animal or plant matter;
4. Dirt;
5. Insects;
6. Plant leaves;
7. Plant stems;
8. Trash; or
9. More than 5% by weight of oil, grease, fat, or a combination thereof.

R9-8-911. General Requirements for a Bedding Tag

A. A white, red, green, or yellow bedding tag required under this Article shall comply with all of the following:

1. The labeling on the tag shall be:
 - a. Imprinted on only 1 side of the tag.
 - b. No less than 1/16 inch high.
 - c. In English, and
 - d. In permanent black ink that does not rub or flake off.
2. The tag shall:
 - a. Be made of polyolefin, plastic, vinyl, teslin, vellum cloth, or equivalent material that does not lose its labeling information when folded;
 - b. Contain the statement: "UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER" at the top of the tag;
 - c. Be securely fastened to a completed bedding at the place of treatment or manufacture; and
 - d. Not be concealed or obstructed from view.

B. A tag may contain additional information, provided the additional information is not inconsistent or contrary to the requirements of A.R.S. §§ 36-796 through 36-796.08, or this Article.

R9-8-912. Tag and Labeling Required On New Bedding

A. A type "M" licensee shall attach a white tag, no less than 6 square inches in size, to each bedding manufactured by the licensee.

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- B.** A white tag shall bear all of the following specific labeling:
1. The statement: "ALL NEW MATERIAL CONSISTING OF:" and a description of the contents in print no less than 1/8 inch high;
 2. A description of the filling materials in accordance with R9-8-909;
 3. An Arizona license number;
 4. The percentage, by weight, of the different filling materials present, listed by descending order of prevalence from the most to the least; and
 5. The statement: "THE MANUFACTURER CERTIFIES THAT THE MATERIALS IN THIS BEDDING ARE DESCRIBED IN ACCORDANCE WITH LAW."

R9-8-913. Tag and Labeling Required On Renovated Bedding

- A.** A type "R" licensee shall attach a red tag, no less than 12 square inches in size, to each bedding manufactured by the licensee that contains any secondhand material. A red tag shall bear all of the following specific labeling:
1. The words: "SECONDHAND MATERIAL", in letters 1/4 inch high;
 2. A description of the filling materials in accordance with R9-8-909;
 3. An Arizona license number; and
 4. The statement: "THE MANUFACTURER CERTIFIES THAT THE MATERIALS IN THIS BEDDING ARE DESCRIBED IN ACCORDANCE WITH LAW".
- B.** A type "R" licensee shall attach a green tag, no less than 6 square inches in size, to a bedding renovated for the personal use of the bedding's owner. A green tag shall bear all of the following specific labeling:
1. The statement: "NOT FOR SALE. OWNER'S OWN MATERIAL WHICH IS SECONDHAND MATERIAL", in letters no less than 1/4 inch high;
 2. The statement: "THE RENOVATOR CERTIFIES THAT THIS BEDDING WAS RECEIVED FROM THE OWNER FOR RENOVATION AND CONTAINS ONLY MATERIAL PROVIDED BY THE OWNER, PART OR ALL OF WHICH IS SECONDHAND MATERIAL CONSISTING OF:";
 3. A description of the filling materials in accordance with R9-8-909;
 4. The name and address of the owner of the bedding;
 5. An Arizona license number; and
 6. The renovation completion date.

R9-8-914. Tag and Labeling Required On Secondhand Bedding

- A.** In addition to a red or green tag required under R9-8-913, a type "R" licensee shall attach a yellow tag, no less than 12 square inches in size, to each secondhand bedding and each renovated bedding that is manufactured in whole or in part from secondhand material.
- B.** A yellow tag shall bear all of the following specific labeling:
1. The treatment method used;
 2. The license number of the licensee;
 3. The date treated; and
 4. A unique identifying number supplied by the licensee.
- C.** In addition to the labeling requirements in subsection (B), a yellow tag attached to a disinfected secondhand bedding shall bear all of the following specific labeling:
1. The statement: "THE RENOVATOR CERTIFIES THAT THIS SECONDHAND BEDDING HAS BEEN DISINFECTED BY A METHOD APPROVED BY

THE ARIZONA DEPARTMENT OF HEALTH SERVICES"; and

2. The words: "SECONDHAND", "BEDDING", and "DISINFECTED", in letters no less than 1/4 inch high.
- D.** In addition to the labeling requirements in subsection B, a yellow tag attached to a sterilized secondhand bedding shall bear all of the following specific labeling:
1. The statement: "THE RENOVATOR CERTIFIES THAT THIS SECONDHAND BEDDING HAS BEEN STERILIZED BY A METHOD APPROVED BY THE ARIZONA DEPARTMENT OF HEALTH SERVICES"; and
 2. The words: "SECONDHAND", "BEDDING", and "STERILIZED", in letters no less than 1/4 inch high.

R9-8-915. Treatment of Secondhand Bedding

Except as provided in A.R.S. § 36-796.07, a person shall not sell or offer for sale a bedding containing any secondhand material unless it has been cleaned and disinfected or sterilized.

R9-8-916. Treatment Record

- A.** A type "R" licensee shall maintain a treatment record for each bedding and filling material that the licensee treats.
1. A bedding treatment record shall contain:
 - a. The treatment date;
 - b. A description of the bedding;
 - c. The treatment method; and
 - d. The unique number required on the yellow tag under R9-9-914(B)(4).
 2. A filling material treatment record shall contain:
 - a. The treatment date;
 - b. The description of the filling material;
 - c. The treatment method; and
 - d. The full name and address of the person for whom the filling material was treated.
- B.** A type "R" licensee shall keep each treatment record for a period of 1 year from the date of treatment.

R9-8-917. Recommended Treatment Methods

- A.** The following treatment methods are approved by the Department:
1. Sterilization by steam for 30 minutes at a pressure of 15 pounds per square inch and a temperature of 250° F., or for 20 minutes a pressure of 20 pounds per square inch and a temperature of 260° F. A charting device installed on the sterilization chamber shall measure and record the chamber pressure and temperature over time.
 2. Sterilization by dry heat at a temperature of 230° F. for 2 hours. A charting device installed on the sterilization chamber shall measure and record the temperature over time.
 3. Sterilization by submersion in boiling water for 10 minutes.
 4. Sterilization through a commercial dry cleaning process.
 5. A secondhand bedding may be disinfected by the application of a spray disinfectant registered by the United States Environmental Protection Agency for use on a bedding. The product shall be applied according to the manufacturer's instructions.
- B.** A licensee may submit a petition to the Department requesting the approval of an alternate treatment method.
1. The petition shall contain:
 - a. The full name, address, and telephone number of person submitting the petition;
 - b. A detailed description of the proposed alternate treatment method;

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- c. A written justification for the use of an alternate treatment method; and
 - d. Any data, including laboratory test data, which demonstrates the effectiveness of the proposed alternate treatment method.
2. The Department shall approve the alternative treatment method if it determines that the proposed method complies with the requirements of A.R.S. §§ 36-796 through 36-796.08 and this Article.

ARTICLE 16. BEDDING REGULATIONS

R9-8-1611. Scope

The regulations in this Article shall apply to the manufacture, repair, or renovation, and sale of bedding within this state and to the manufacture, repair, renovation of bedding held for sale in this state regardless of the place of manufacture, repair or renovation.

R9-8-1612. Legal authority

The regulations in this Article are adopted under the authority granted by Title 36, Chapter 6, Article 11, A.R.S.

R9-8-1614. Definitions

In this Article, unless the context otherwise requires:

- 1. "Bedding" includes upholstered furniture and means any mattress, box spring, upholstered chair, couch, or other upholstered device or any quilted pad, packing pad, mattress pad, hammock pad, pad, comforter, bunk quilt, sleeping bag, pillow, cushion, hassock or other bag or container made of leather, cloth, plastic, or any other material that is used as a covering or is stuffed or filled in whole or in part with concealed material in addition to the structural units, all of which may be used by any human being for sleeping, resting, or reclining purposes. "Bedding" shall not include the upholstered portions of motor vehicles other than mobile homes, house trailers, and camp trailers.
- 2. "Director" means the Director of the Department of Health Services.
- 3. "Department" means the Department of Health Services.
- 4. "Filling materials" means all materials, prefabricated forms, articles, or portions thereof, used as filling in the manufacture, repair, or renovation of bedding and upholstered furniture.
- 5. "Law label" includes any of the labels required under these regulations and the provisions of Article 11, Chapter 6, Title 36, A.R.S. to be attached to bedding manufactured, repaired or renovated.
- 6. "Lot" means the entire group of articles treated in one treatment chamber during one operation.
- 7. "New" means any material or article which has not been previously used for any purpose. Manufacturing processes shall not be considered a prior use.
- 8. "Person" includes persons, partnerships, companies, corporations, associations, and governmental agencies.
- 9. "Regulations" means rules and regulations of the Department adopted under Article 11, Chapter 6, Title 36, A.R.S.
- 10. "Renovate" means to repair, make over, re-cover, restore, or renew bedding or upholstered furniture and place it in a good state of repair.
- 11. "Secondhand" means any article or material or portion thereof of which prior use of any kind has been made.
- 12. "Sell", or any of its variants, includes any of, or any combination of, the following: sell, offer or expose for sale, barter, trade, lend, deliver, give away, rent, con-

sign, lease, possess with intent to sell or dispose of in any other commercial manner. The possession of any article of bedding or filling materials, as defined in this Section, by any maker, remaker or dealer, in the course of business shall be presumptive evidence of intent to sell.

13. "Sterilizer" means a person who sterilizes, disinfects, or fumigates any article of upholstered furniture, bedding, or filling material relating thereto.

R9-8-1615. Exceptions

- A. Secondhand bedding held for sale on July 11, 1969, and continuously thereafter shall not be subject to the requirements of A.R.S. § 36-796.04 and the regulations in this Article regarding the treatment and sterilization of secondhand bedding. Secondhand bedding which has been sold or otherwise removed from sale since July 11, 1969, is not exempt under this subsection.
- B. The regulations in this Article and the provisions of Article 11, Chapter 6, Title 36, A.R.S. shall not apply to:
 - 1. The manufacture, repair, or renovation of bedding which occurred prior to July 11, 1969.
 - 2. The sale of bedding under order of any court.
 - 3. The sale of bedding by a householder of bedding owned and used by such householder and his family and which was not acquired for resale, except that the sale of any such bedding by a householder through an agent shall be within the provisions of this Article.

R9-8-1616. Licenses for manufacture and renovation of bedding

- A. The Department will issue a license authorizing the manufacture, repair or renovation of bedding to any person making application on the form prescribed by the Department. Incomplete applications may be denied with a statement of the reasons therefor. Two categories of licenses are issued under this Section: to persons engaged in the manufacture of bedding, whether from new material or from secondhand material; and to persons engaged in the renovation of secondhand bedding.
- B. Every license issued by the Department under this Section shall be for the exclusive use of the person to whom it is issued and the number of the license issued shall not thereafter be issued to or used by any other person. Upon request, the Department may authorize the use of a number assigned to a manufacturer or renovator by another state, provided that that number is not already in use by a person licensed under this Section.
- C. A license issued under this Section may be suspended or revoked if the Department determines that the licensee has violated the regulations of this Article or the provisions of Article 11, Chapter 6, Title 36, A.R.S.

R9-8-1617. "Off Sale" tags

- A. Bedding or material which is offered for sale, or which could be offered for sale, in violation of the regulations of this Article or the provisions of Article 11, Chapter 6, Title 36, A.R.S. shall be placed "Off Sale" by an authorized state bedding inspector by affixing to such bedding or material an "Off Sale" tag, attached in such a manner as to be readily open to view. "Off Sale" tags are not to be removed, defaced, altered, concealed or obstructed from view in any manner by any person except as provided in subsection (D) of this regulation.
- B. "Off Sale" tags placed on bedding or material under this regulation shall contain the following:

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This article is NOT TO BE SOLD because it does not comply with the provisions of the Bedding Act of the State of Arizona and has accordingly been placed "Off-Sale" as provided for in A.R.S. § 36-796.01, subsection (E), and rule R9-8-1617, A.C.R.R. This tag may only be removed by a state bedding inspector or as provided in A.C.R.R. R9-8-1617(D).

- C. Bedding or material which has been placed "Off-Sale" under this Section shall be removed from sale and shall not be offered for sale until such time as an authorized state bedding inspector has removed the "Off-Sale" tag or the bedding or material has otherwise been released for sale under subsection (D) of this Section.
- D. "Off-Sale" tags affixed to bedding or material under this Section may be removed only by an authorized state bedding inspector or by the owner of the bedding or materials or his agent, upon receipt of a written "Release for Sale" which has been duly issued by the Department.

R9-8-1618. Labeling requirements

The kind and grade of filling material shall be included on the law label as provided in R9-8-1619 and when included the description shall comply fully with these regulations, including but not limited to the regulations regarding labeling nomenclature.

R9-8-1619. Official law label requirements

- A. Law labels shall be securely fastened to completed articles of bedding in a manner approved by the Department and in such a manner as to be readily open to view. Law labels are not to be concealed or obstructed from view in any manner. All law labels shall be attached to the bedding at the place of manufacture.
- B. Law labels shall be constructed of substantial cloth or material of equal quality.
- C. Law labels shall include the following:
1. A white label printed in black ink shall be used for all bedding manufactured from all new material.
 2. A red label printed in black ink shall be used for all bedding manufactured in whole, or in part, from second hand material.
 3. A green label printed in black ink shall be used for bedding renovated, reworked or repaired for the owner, for the owner's own use and from the owner's material, which is in whole or in part secondhand material. When such bedding is not to be used by the owner, such as bedding renovated for resale, it shall be labeled with a red label.
- D. All law labels shall be at least 2" x 3" in size, provided, however, that the labels shall be larger when the required size of

the type or required statements make it necessary or when otherwise required by law. The minimum size of type shall be one eighth inch in height and all printing shall be in English.

- E. All law labels shall include the following statements, headings and other information:
1. The statement "Under penalty of law this tag is not to be removed except by the consumer" shall appear at the top of the label.
 2. White labels shall include the heading "ALL NEW MATERIAL"; red labels shall include the heading "SECONDHAND MATERIAL"; and green labels shall include the heading "NOT FOR SALE, OWNER'S OWN MATERIAL WHICH IS SECONDHAND MATERIAL".
 3. All white labels shall contain a description of the kind and grade of filling material, expressed in percentage by weight when mixed. Percentages shall be computed on the basis of avoirdupois weight of the filling material present and shall be designated on the label in order of predominance, the largest component in percentages by weight first.
 4. All labels shall include the manufacturer's or renovator's license number assigned or approved by the Department under rule R9-8-1616.
 5. White labels shall include the statement "Certification is made by the manufacturer that the materials in this article are described in accordance with law".
 6. Red labels which include a description of filling materials shall do so in accordance with paragraph (3) of this subsection and shall include the statement "Certification is made by the manufacturer that the materials in this article are described in accordance with law".
 7. All green labels shall include the statement "Certification is made that this article was received from the owner for renovation and contains only material provided by the owner, part or all of which, is secondhand material".
 8. Green labels shall include the name and address of the owner of the bedding.
 9. White and red labels for sleeping bags, mattresses, comforters, mattress pads, pads, box springs and pillows shall include the width and length of the bedding expressed in inches and the total net weight of all filling materials contained in the bedding. Decorator pillows need not show size.
- F. All law labels shall be prepared in the following form:
1. Articles of bedding manufactured from all new material:

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(WHITE LABEL)

Space for stitching	
<p style="text-align: center;">Under penalty of law this tag not to be removed except by the consumer.</p> <p style="text-align: center;">ALL NEW MATERIAL</p> <p style="text-align: center;">consisting of</p>	
	License No.
	<p style="text-align: center;">Certification is made by the manufacturer that the materials in this article are described in accordance with law.</p>
Name and address of vendor or manufacturer	

Minimum type size 1/8
inch in height.

← Insert description of filling
materials by clearly imprinting
in English, using letters not less
than 1/8 inch high in
black ink.

← Insert finished size and weight
where required.

← This space optional

Minimum tag size 2" x 3"

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2. ~~Articles of bedding manufactured in whole or in part from secondhand material:~~

(RED LABEL)

Space for stitching	
Under penalty of law this tag not to be removed except by the consumer.	
SECONDHAND MATERIAL consisting of	
	License No.
	Certification is made by the manufacturer that the materials in this article are described in accordance with law.
Name and address of vendor or manufacturer	

Minimum type size 1/4 inch in height for this statement.

← Insert description of filling materials by clearly imprinting in English, using letters not less than 1/8 inch high in black ink. (Optional)

← Insert finished size and weight where required.

← This space optional

Minimum tag size 3" x 4"

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3. Bedding renovated, reworked or repaired for the owner, for the owner's own use and from the owner's material which is in whole or in part secondhand material:

(GREEN LABEL)

(Space for stitching)	
Under penalty of law this tag not to be removed except by the consumer.	
<p align="center">NOT FOR SALE</p> <p>OWNER'S OWN MATERIAL WHICH IS SECONDHAND MATERIAL</p> <p>Certification is made by that this article was received from the owner for renovation and contains only material provided by the owner, part or all of which, is secondhand material.</p> <p>This article consists of:</p>	
Renovated or repaired by:	
License No. _____	Date _____
Owner: Address:	

Minimum tag size 2" x 3"

- ← Minimum type size 1/8 inch in height in capital letters.

← Insert description of filling materials by clearly imprinting in English, using letters not less than 1/8 inch high. (Optional)

← This space optional.

G. Labels may contain information in addition to that required under this rule, provided the information is not inconsistent or contrary to the requirements or purposes of this rule, and complies with all applicable regulations of this Article.

R9-8-1620. Universal filling material requirements

All filling materials shall be reasonably clean and free from trash, pith, pulp, extraneous material, sludge, oil, grease, fat, filth, excreta, skin, epidermis, disagreeable odors, and other contamination.

R9-8-1621. Oil and grease limitations

When any filling material contains more than 5.0% of oil, grease, or fat or a combination thereof, the material is not permissible for sale in Arizona.

R9-8-1622. Sludge limitation

When any filling material contains more than 0.3 milliliter of sludge, the material is not permissible for sale in Arizona. Sludge shall mean any material from a 20 gram sample of filling material

which will settle out of a solution which has passed through a 40-mesh sieve.

R9-8-1624. Universal definitions and labeling requirements

The following terms shall be stated on the law label when applicable, in addition to other labeling nomenclature required by these regulations:

1. "Bating" means fibers which have been carded or garnetted into layer form.
2. "Bleached" means any product whose intrinsic color has been removed and whiteness improved by treating with a chemical compound.
3. "Colored" or "dyed" means any filling material which has been treated and impregnated with coloring matter.
4. "Damaged" means any filling material or article the appearance, function, or value of which has been adversely affected by machine processing or by exposure to fire, water, or other elements or source.

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5. "Fibers of Unknown Kind" means miscellaneous new textile materials of unknown origin and, for practical purposes, unknown fiber content.
6. "Pad" means any filling material which is interwoven, punched, pressed, shaped, or otherwise fabricated into pad form.
7. "Resinated or resin treated" means any filling material treated with a combination of synthetic resin or a combination of synthetic resin and latex.
8. "Rubberized" means any filling material which has been treated with a latex compound.

R9-8-1625. Optional labeling for cotton filling material

In lieu of the requirement set forth in R9-8-1618 of these regulations, any cotton filling material may be designated on the law label as "Blended Cotton" without stating the types of cotton present.

R9-8-1626. Definitions of types of cotton

In describing the types of cotton on the new label under R9-8-1618, the following terms shall be used as indicated:

1. "Cotton" means a vegetable seed fiber consisting of unicellular hairs attached to the seed of several species of the genus *Gossypium* of the family Malvaceae.
2. "Staple" means the staple fibrous growth as removed from cottonseed in the usual process of ginning (first cut from seed).
3. "Comber" means the cotton waste resulting from running card sliver through a combing machine.
4. "Fly" means the cotton waste resulting when cotton is introduced to the carding machine.
5. "Gin flues" mean the cotton waste resulting from staple cotton in the ginning mill.
6. "Picker" means the cotton waste remaining after cotton has been run through the picker in the cotton mill.
7. "Strips" means the cotton waste produced by or removed from the carding cloth following the carding process.
8. "Linters" means the fibrous growth resulting from the first cut of the cottonseed (subsequent to the usual first process of ginning) in the cotton oil mill.
9. "Second cut linters" means the fibrous growth resulting from the second cut of cottonseed in the cotton oil mill.

R9-8-1627. Labeling requirements—definitions

In describing the types of fowl plumage on the law label under R9-8-1618, the following terms shall be used as indicated:

1. "Crushed feathers" means feathers which have been processed by a curling, crushing, or chopping machine and includes the fiber resulting from such processing and which has changed the original form of the feather without removing the quill.
2. "Damaged feathers" means feathers which have been broken, injured by insects or depreciated from the original value in any manner.
3. "Down" means the undercoating of waterfowl, consisting of the light fluffy filaments "barbs" growing from one quill point but without any quill shaft.
4. "Down fiber" means the detached barbs from down and plumules and detached barbs from the basal end of waterfowl quill shaft which are indistinguishable from the barbs of down.
5. "Feathers" means the plumage or out growth forming the contour and external covering of fowl which are whole in structure and which have not been processed in any manner other than dusting and washing.

6. "Feather fiber" means the detached barbs of feathers which are not joined or attached to each other.
7. "Landfowl" means plumage derived from chickens and turkeys.
8. "Plumage" means the outer covering of fowl.
9. "Plumules" means waterfowl plumage with underdeveloped soft and flaccid quill with barbs indistinguishable from those of down.
10. "Quill feathers" means feathers exceeding four inches in length and/or having a quill point exceeding 6/16ths of an inch in length.
11. "Residue" means quill pith, quill fragments, trash or foreign matter.
12. "Waterfowl" means plumage derived from ducks and geese.
13. "Duck" means plumage derived from ducks.
14. "Goose" means plumage derived from geese.
15. "Turkey" means plumage derived from turkeys.
16. "Chicken" means plumage derived from chickens.

R9-8-1628. Down products

- A.** Any industry product labeled as "down", "duck down", or "goose down" shall conform to the following composition requirements:

Down and plumules	75% minimum
Extraneous (total of components below)	25% maximum
Waterfowl feathers (feathers over 2.5 inches not permitted)	25% maximum
Down fiber	15% maximum
Feather fiber	15% maximum
Landfowl feather and fiber	2% maximum
Residue	2% maximum

- B.** Any industry product labeled as "waterfowl feathers", "duck feathers", or "goose feathers" shall conform to the following composition requirements:

Waterfowl feathers	80% minimum
Extraneous (total of components below)	20% maximum
Landfowl feathers and fiber	8% maximum
Feather fiber	5% maximum
Down and down fiber	5% maximum
Residue	2% maximum

- C.** The specie of waterfowl plumage need not be designated but, when designated, the product shall contain a minimum of 90% of such plumage.

- D.** When plumage products are designated as containing a numerical percentage of down and feathers, the down portion stated shall be the actual amount of down and plumules present as defined in paragraphs (3) and (5) of R9-8-1627. The feather portion shall comply with paragraph (5) of R9-8-1627.

R9-8-1629. Tolerances

- A.** When any plumage product exceeds the permissible amount of residue, landfowl plumage, down fiber, and feather fiber as provided for in applicable Sections of these regulations, the entire amount of such components present shall be stated on the law label.

- B.** Plumage products labeled as down, duck down, or geese down shall have printed on the lower portion of the law label the following: "Note: This product contains an amount of feathers not exceeding that allowable by law".

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- C. The oxygen number of any filling material of waterfowl or landfowl origin shall not exceed 20 grams of oxygen per 100,000 grams of sample.

R9-8-1630. Wool and hair regulations

In describing the type of wool or hair on the law label under R9-8-1618, the following terms shall be used as indicated:

1. "Wool" means the fleece of sheep which has been scoured and carbonized. It shall be free of kemp and vegetable matter.
2. "Hair" means the coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats.
3. Hair shall be classified and labeled as either "horse tail hair", "horse mane hair", "hog hair", "cattle tail hair", "cattle hide hair", or "goat hair".

R9-8-1631. Man-made fiber regulations

In describing the types of man-made fibers on the law label under R9-8-1618, the following terms shall be used as indicated:

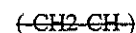
1. "Acetate" means a manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92% of the hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.
2. "Acrylic" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of acrylonitrile units ($-\text{CH}_2\text{CH}-$).
3. "Azlon" means a manufactured fiber in which the fiber-forming substance is composed of any regenerated naturally occurring proteins.
4. "Glass" means a manufactured fiber in which the fiber-forming substance is glass.
5. "Metallic" means a manufactured fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal.
6. "Modacrylic" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of less than 85% but at least 35% by weight of acrylonitrile units.
7. "Nylon" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polyamide having recurring amide groups ($-\text{C}-\text{NH}-$) as an



integral part of the polymer chain.

8. "Nylon" means a manufactured fiber containing at least 85% of a long chain polymer of vinylidene dinitrile ($\text{CH}_2\text{C}(\text{CN})_2$) where the vinylidene dinitrile content is no less than every other unit in the polymer chain.
9. "Olefin" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of ethylene, propylene, and other olefin units.
10. "Polyester" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of any ester of a dihydric alcohol and terephthalic acid ($\text{p-HOOC-C}_6\text{H}_4\text{COOH}$).
11. "Rayon" means a manufactured fiber composed of regenerated cellulose, as well as manufactured fibers composed of regenerated cellulose in which substituents have replaced not more than 15% of the hydrogen of the hydroxyl groups.

12. "Saran" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 80% by weight of vinylidene chloride units ($-\text{CH}_2\text{CCl}_2-$).
13. "Spandex" means a manufactured fiber in which the fiber-forming substance is a long chain synthetic polymer comprised of at least 85% of a segmented polyurethane.
14. "Vinal" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 50% by weight of vinyl alcohol units ($-\text{CH}_2\text{CHOH}-$), and in which the total of the vinyl alcohol units and any one or more of the various acetal units is at least 85% by weight of the fiber.
15. "Vinyon" means a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of vinyl chloride units ($-\text{CH}_2\text{CHCl}-$).
16. "Rubber" means a manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories:
 - a. A manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (non-crystalline) polyolefins.
 - b. A manufactured fiber in which the fiber-forming substance is copolymer of acrylonitrile and diene (such as butadiene) composed of not more than 50% but at least 10% by weight of acrylonitrile units.



- e. A manufactured fiber in which the fiber-forming substance is a polychloroprene or a copolymer of chloroprene in which at least 35% by weight of the fiber-forming substance is composed of chloroprene units



R9-8-1632. Miscellaneous vegetable fiber regulations

In describing the type of vegetable fiber, other than cotton, on the law label under R9-8-1618, the following terms shall be used as indicated:

1. "Cellulose fiber" means wood or other vegetable growth reduced to a fibrous state.
2. "Coco fiber" or "coir fiber" means the still elastic fiber obtained from the outer husk of the coconut.
3. "Corrugated fiber board" means thick coarse paper, corrugated to give it elasticity.
4. "Excelsior" means shredded thread-like wood fibers but shall not include waste products such as shavings, sawdust, or similar waste.
5. "Flax fiber" means the fiber derived from the plant of the genus *Linum Usitatissimum* raised primarily for fiber.
6. "Jute fiber" means the best fiber derived from several species of the *Corchorus* plant.
7. "Kapok" means the mass of fibers investing the seed of the kapok tree (*Ceiba Pentandra*).
8. "Milkweed fiber" means the surface fiber from the inside of the seed pods of milkweed plants (*Asclepias*).

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9. "Moss" means the processed fibers of epiphytic plants forming pendant tufts from trees.
10. "Palm fiber" means the fibrous material obtained from the leaf of a palm, palmetto, or palmyra tree.
11. "Sisal fiber" means the leaf fiber derived from the Agave Sisalana and similar species of Agaves.
12. "Tula fiber" means the leaf fiber derived from the Tula Istle and similar species of Agaves.

R9-8-1633. Treatment and cleaning of secondhand bedding
No person shall sell, offer for sale or include in a sale any item of secondhand bedding or any item of bedding of any type manufactured in whole or in part from secondhand material, including their component parts or wiping rags unless such material has been thoroughly cleaned of all dirt, grime and grease and treated by one of the methods described in rules R9-8-1641, R9-8-1642, R9-8-1643, R9-8-1644, R9-8-1645 or R9-8-1646 or by some other method approved in writing by the Director, except that the methods described in rules R9-8-1642 and R9-8-1646 shall be used to treat only the bedding and materials described in those Sections.

R9-8-1634. Licenses to apply sterilization, disinfection, or disinfection treatment

- A. Only bedding which has been cleaned and treated by sterilization, disinfection, or disinfection by persons licensed under this Section and by methods provided for under the regulations of this Article shall be deemed to comply with the requirements of A.R.S. § 36-796.04, subsection (A).
- B. An applicant for a license to apply sterilization, disinfection, or disinfection treatment shall make application on forms provided by the Department and shall include with the application detailed plans in duplicate (two copies) of the proposed equipment or procedures to be utilized.
- C. An authorized state bedding inspector may require experimental tests including data to determine the effectiveness and safety of any apparatus or device used or proposed to be used to carry out the sterilization, disinfecting or disinfecting provisions of this Article.
- D. Every license issued by the Department under this Section shall be for the exclusive use of the person to whom it is issued and the number of the license issued shall not thereafter be issued to or used by any other person.
- E. A license will be issued under this Section only if the applicant's plans reflect that the proposed equipment and procedures will comply with the requirements of this Article

pertinent to the application of sterilization, disinfection or disinfection treatment.

- F. Issuance of a license under this Section does not constitute a certification by the Department that the equipment or procedures to be used by the licensee comply with local building and safety codes.

R9-8-1635. Tests and inspections of treatment equipment

All treatment facilities are subject to tests for proficiency of operation, and the premises, equipment, books, and records kept in connection therewith are subject to inspection at all reasonable times.

R9-8-1636. Treatment chamber and identification; numbering of lot

When more than one treatment chamber is operated on any premises by the same person, each chamber shall be permanently identified by a letter, beginning with "A" and proceeding in alphabetical order. All lots processed through each chamber shall be numbered consecutively.

R9-8-1637. Charts

Vacuum-time recording charts on vacuum chemical chambers and heat-time recording charts on dry heat chambers shall be prepared and in addition to the device recorded data have noted on the face thereof the date of the operation, the chamber letter, if any, and the lot number used in connection with each operation. The following is an example of the correct form of keeping charts:

Date	Chamber	Lot No.
2/23/66	A	224
2/24/66	B	225

R9-8-1638. Records

- A. Records shall be prepared which show the date of treatment, the chamber letter, if any, the lot numbers and tag numbers in consecutive order, the names of the persons for whom the bedding was treated, and the names and addresses of the receivers if different than the source. All such records as well as charts required by regulations R9-8-1637, R9-8-1641 and R9-8-1642 shall be kept for a period of one year.
- B. Mattresses and pads with duofolds or divans shall be removed from such articles and treated and recorded separately.
- C. The following is an example of the correct form of keeping records:

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Date	Lot No.	Tag Nos.	Articles	Source (Private individual or Firm Name)	Name & address of receiver if different from source
2/23/74	A-224	440-444	5 mattresses	Jim's Furn Store	
		445	1 divan	Hilmar Furn Store	
		446-447	2 pads	Ace Furn Store	
		448	1 Chesterfield (w/3 cushions)	Ace Furn Store	
2/24/74	B-225	449	VOID	Voided labels to be picked up by inspectors	
		450-452	3 mattresses	Grand Furn Co	
		453-458	6 mattresses	Grand Furn Co	
		459	1 mattress	Mr. O.K. Smith	
		460	1 davenport (w/3 cushions & 2 pillows)	Mrs. A.F. Wood	
		461	1 studio couch (w/1 mattress & 3 pillows)	Antique Store	Bob Brown, 333 Broadway, Phoenix Arizona

D. A tag shall apply to a unit and all its parts.

E. No person shall knowingly enter false information in any record required to be maintained under these regulations nor shall any person knowingly remove, secrete, destroy, mutilate, deface, or alter any such records without written permission from the Department.

R9-8-1639. Storage of formaldehyde

Formaldehyde shall be stored in air tight containers which shall be kept tightly closed. Storage under other conditions may permit the crystallization of the formaldehyde in the solution.

R9-8-1640. Filling materials

Baled filling materials shall not be treated while still in the bale.

R9-8-1641. Vacuum chemical method

A. The vacuum chamber shall be placed under 29-inch vacuum. For a chamber having a capacity of 500 cubic feet, 3 quarts of formaldehyde 40 percent solution, and 3 pounds of potassium permanganate shall be placed in a water-jacketed auxiliary tank previously heated to 120 degrees F. and the formalin vapors introduced slowly into the chamber. This will cause the vacuum to drop about 26 inches. A dosage of carbon dioxide gas shall then be introduced into the chamber until the vacuum drops to 24 inches. One half gallon of carbon disulphide shall then be introduced into the chamber after running it through not less than 3 feet of coil in another water-jacketed auxiliary tank previously heated to 180 degrees F. This process will reduce the vacuum to about 22 inches. Another dosage of carbon dioxide shall then be passed into the chamber until the vacuum is reduced to about 20 inches. After all gases have been admitted into the chamber, the vacuum shall be dropped to a point between 15 inches and 12 inches, after which all valves shall be tightly closed and the chamber held at this vacuum for a minimum of 2 hours. At the end of this time, air shall be admitted until the gauge reads 0. The chamber shall then be pumped out to 25 inches of vacuum not less than twice to remove the fumes, and then opened. If the capacity of the vacuum chamber is more or less than 500 cubic feet, the dosages of the respective gases shall be increased or decreased proportionately.

B. A suitable recording device approved by the Department shall be installed and maintained to record on a chart the time and vacuum factors prevailing during the entire operation.

R9-8-1642. Dry heat method

A. In sterilizing by the dry heat method, a temperature of 230 degrees F. shall be maintained in all parts of an approved chamber for at least one hour and 15 minutes (an alternate time-temperature standard for fragile or heat sensitive articles shall be 205 degrees F. for one hour and 30 minutes) and thirty-two ounces of a 40 percent solution of formaldehyde shall be vaporized and liberated within the chamber for every 1,000 cubic feet of chamber and circulating ducts displacement. The formaldehyde solution shall be introduced into the chamber from an approved outside receptacle after the chamber has been sealed and immediately before the above-described temperature is reached and shall be vaporized in an approved receptacle within the chamber. All chambers shall be equipped with racks or devices and the articles to be sterilized shall be so placed therein that complete circulation of heat and gases around every article being sterilized shall be attained. All chambers shall be insulated sufficiently to insure maintenance of temperature and shall be tightly sealed to prevent any leakage of gases. A thermostat shall be connected with the heating device to provide and maintain a reasonably uniform temperature at + or - 5 degrees of the prescribed temperature.

B. A suitable recording device approved by the Department shall be installed and maintained to record on a chart the time and temperature prevailing during the entire operation.

C. Each chamber in which the dry heat method of sterilization is performed shall be equipped with a fresh air inlet and an exhaust fan and duct discharging to the outside air. To clear the chamber of dangerous gases and fumes upon completion of the sterilization cycle, the fresh air inlet to the chamber shall be opened and the exhaust fan operated for 30 minutes or until all dangerous fumes have been exhausted through the discharge duct. The sterilized articles may then be removed from the chamber.

D. Foam mattresses, pillows, and cushions or padding.

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1. The temperature of 230 degrees F. for one hour and 15 minutes required in the dry heat/formaldehyde method can be changed to 205 degrees F. for one hour and 30 minutes to alleviate any problems encountered with foam products.
2. Foam mattresses, pillows, and cushions which are enclosed in a removable cover need not be subjected to treatment by the above method provided the cover is removed and laundered, or replaced with new material, and the foam itself is washed off with a quaternary ammonium compound. The yellow tag may then be attached to the laundered cover or to the new cover, whichever is used.
3. Foam mattresses, pillows, and cushions whose covers are not removable must still be treated by the methods described in subsections (A) or (D)(1).

R9-8-1643. Feather and down method

In sterilizing secondhand feathers and down, the feathers and down of each customer shall be separately treated and not combined with feathers and down from other sources.

- A. In sterilizing feather and down filled pillows or other articles, the contents shall be removed from ticks and covers or containers and the feathers and down sterilized loose, or they may be placed in coarse mesh bags, loosely filled, and then sterilized.
- B. Ticking must be dry cleaned or laundered in water of a temperature of not less than 212 degrees F. or new ticking shall be used.
- C. All feathers and down, loose or in mesh bags, shall be placed in a closed receptacle and subjected to streaming live steam out of jets not less than one quarter inch in diameter. One jet shall be installed in the receptacle for every 50 cubic feet of displacement or fraction thereof.
 1. When feathers and down are sterilized in mesh bags, the material shall be inserted in the bags sufficiently loose to permit the steam and heat to penetrate to all of the material.
 2. Bags shall be inserted in the receptacle so that they can tumble freely and not restrict the penetration of the steam and heat into the feathers and down.
- D. The streaming steam shall be injected while the mesh bags or loose feathers and down are in motion to bring about complete sterilization, after which the steam shall be forced out of the chamber and the feathers and down subjected to sufficient heat for the period of time necessary to thoroughly dry them.
- E. The Muroza or kindred types of feather and/or down sterilizers may be used provided the following requirements are complied with:
 1. A steam pressure of 100 pounds shall first be developed.
 2. The sterilizing chamber shall be heated to 290 degrees F.
 3. The feathers and/or down shall then be drawn into the sterilizing chamber and subjected to streaming live steam for a period of at least one minute.
 4. The feathers and/or down shall then be subjected to heat at not less than 290 degrees F. for a period of at least 7 1/2 minutes.

R9-8-1644. Wet method

In sterilizing by the wet method, the material to be sterilized shall be immersed in water, maintained at a temperature of 212 degrees F. for at least 10 minutes with proper arrangements for agitation of the material while in the vat, after which all of the material shall be capable of passing through a hole 1 1/2 inches in diameter.

R9-8-1645. Steam under pressure method

In sterilizing by this method, the material to be sterilized shall be subjected to steam under pressure for a period of 30 minutes, the pressure of the steam to be a minimum of 15 pounds per square inch, the temperature of the steam to be a minimum of 248 degrees F. A properly checked steam pressure gauge and a thermometer, both visible from the outside of the chamber, shall be provided.

R9-8-1646. Disinfecting

Secondhand dinette chairs and office chairs with plastic covers, pads and metal frames, or molded polyfoam frames, plastic covered hassocks, and bean bag chairs with polystyrene bead fillers which appear to be free of insect infestation may be damp cleaned and disinfected utilizing a disinfectant product of a class approved by the Department for this purpose.

R9-8-1647. Treatment and sterilization tags

- A. All articles of secondhand bedding sold, offered for sale or included in a sale which are required to be cleaned and treated under rule R9-8-1633 shall have a yellow tag evidencing treatment and cleaning of the bedding in accordance with the rules and regulations of the Department firmly attached to the items in such a manner as to be readily open to view.
- B. Yellow tags shall be not less than 3" x 4" in size and shall be made of substantial cloth or a material of equal quality such as erasure proof paper of substantial weight and of a grade that will not change color on application of an adhesive. The yellow tag shall be affixed to the item of bedding with silicate of soda or an equivalent adhesive or by a fastener of a class approved by the Department for this purpose.
- C. All yellow tags applied under this Section shall be numbered consecutively by the licensee applying the tags.
- D. Yellow tags shall contain the information required under this Section printed in black ink and in the English language.
- E. The following types of yellow tags are authorized under this Section:
 1. Type T, which shall be attached to all articles of bedding treated under rule R9-8-1646.
 2. Type S, which shall be applied to all articles of bedding treated by a method other than as provided in regulation R9-8-1646.
- F. Yellow tags shall contain the following statements, headings, and information:
 1. All yellow tags shall contain the statement "Under penalty of law this tag is not to be removed except by the consumer".
 2. Type T yellow tags shall contain the statement "Certification is made that this ~~SECONDHAND ARTICLE~~ has been ~~TREATED AND CLEANED~~ by a method approved by the Arizona Department of Health Services".
 3. Type S yellow tags shall contain the statement "Certification is made that this ~~SECONDHAND ARTICLE~~ has been ~~STERILIZED~~ by a method approved by the Arizona Department of Health Services."
 4. Type S yellow tags shall include the lot number in which the article was sterilized.
 5. All yellow tags shall contain the following information:
 - a. Tag number;
 - b. Description of the article or filling material treated;
 - c. The number of loose cushions, pads, pillows, etc. belonging to and forming a part of the article of bedding;
 - d. Name of the person for whom the article was treated;
 - e. Date treated;

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- f. Name and address of the licensee performing the treatment;
- g. License number assigned by the Department to the licensee performing the treatment.
- G. The form of the yellow tag shall be as follows:
 - a. For articles of secondhand bedding treated by the method specified in rule R9-8-1646 or where this tag is specified by the Department;
 - b. For articles of secondhand bedding treated by a method specified in rules R9-8-1641 through R9-8-1645 or where this tag is specified by the Department;

R9-8-1648. Molded latex foam rubber regulations

The term "Latex Foam" or "Latex Foam Rubber" may be used interchangeably and shall mean an insert made from synthetic latex foam, natural latex foam, or a mixture of natural and synthetic latex foam.

R9-8-1649. Violations

A.R.S. § 36-796.08 provides that a person who violates any provisions of Article 11, Chapter 6, Title 36, A.R.S. or of any rule established thereunder is guilty of a misdemeanor.

(YELLOW LABEL—TYPE S)

Under penalty of law this tag not to be removed except by the consumer.
Certification is made by that this SECONDHAND ARTICLE has been STERILIZED by a method approved by the Arizona Department of Health Services.
Method _____
Lot No. _____ Tag No. _____
Article _____ _____ _____
Sterilized for: _____
Name _____
Address _____
Date _____
(Space for name _____ License No. _____ of licensee

Black ink—English language.

← The words "SECONDHAND ARTICLE" and "STERILIZED" shall be in 24 point Gothic type.

← Minimum type size 1/8 inch in height

Minimum tag size 3" x 4"

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(YELLOW LABEL—TYPE T)

(Space for stitching)

Under penalty of law this tag not
to be removed except by the con-
sumer.

Certification is made by that this

SECONDHAND ARTICLE
has been
TREATED AND CLEANED

by a method approved by the
Arizona Department of
Health Services.

Method _____

Tag No. _____

Article _____

Treated for: _____

Name _____

Address _____

Date _____

(Space for name License No.
of licensee)

Black ink—English language

← The words "SECONDHAND
ARTICLE" AND "TREATED
AND CLEANED" shall be
in 24-point Gothic type.

← Minimum type size
1/8 inch in
height

Minimum tag size 3" x 4"

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

PREAMBLE

1. Sections Affected

R19-3-201
R19-3-202
R19-3-203
R19-3-203
R19-3-204
R19-3-204
R19-3-205
R19-3-205
R19-3-206
R19-3-206
R19-3-207
R19-3-207

Rulemaking Action

Amend
Repeal
Re number
Amend
Re number
Amend
Re number
Amend
Re number
Amend
Re number
New Section

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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §5-504 (B).

3. The effective date of the rules:

October 9, 1998.

4. A list of all previous notices appearing in the Register addressing the rule:

Notice of Rulemaking Docket Opening: 2 A.A.R. 3804, August 30, 1996.

Notice of Proposed Rulemaking: 3 A.A.R. 1648, June 13, 1997.

Notice of Termination of Rulemaking: 4 A.A.R. 1281, June 5, 1998.

Notice of Proposed Rulemaking: 4 A.A.R. 1337, June 12, 1998.

Notice of Rulemaking Docket Opening: 4 A.A.R. 1928, July 17, 1998.

Notice of Public Information: 4 A.A.R. 1936, July 17, 1998.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mr. Geoffrey Gonsher, Executive Director

Address: Arizona State Lottery
4740 E. University
Phoenix, Arizona 85034

Telephone: (602) 921-4400

Fax: (602) 921-4488

6. An explanation of the rules, including the agency's reasons for initiating the rules:

A.A.C. R19-3-201 through R19-3-207 is required by A.R.S. § 5-504 and prescribes the requirements and procedures for Arizona retail businesses to obtain a license to sell Lottery game products, display promotional materials, requirements for the sale and payment of instant games and on-line games, and retailer conduct. The rules establish procedures for revocation, suspension or renewal of retailer licenses, hearing procedures and Lottery conducted compliance investigations. This amendment is required by the 5-year rule review and will provide consistency in the language of the text and, further, make the rules clear, concise and understandable. The amendment also contains the license time-frames required by A.R.S. § 41-1073.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

A. The Arizona State Lottery.

Costs to the Lottery for this Article are included in the agency's appropriated budget. Retailer related costs include background investigations for licensing, delivery of tickets, supplies and point-of-sale promotional items, installation of telephone lines for the on-line terminal and monthly communication fees for each retailer selling on-line games, and administrative costs collecting sales revenues and providing customer service to retailers. Cost of a licensing investigation, which includes an ADA (Americans with Disabilities Act) on-site inspection, is approximately \$200 per location. Initial telecommunication line installation for an on-line retailer terminal is approximately \$400 and the average monthly line charge is \$50. The Lottery has approximately 2400 on-line retailers. The Lottery paid \$1.9 million in telecommunication line-charges in fiscal year 1997.

B. Political Subdivisions.

Political subdivisions of this state are not directly affected by the rule.

C. Businesses Directly Affected by the Rulemaking.

Businesses affected by this rule are Lottery retailers who sell Lottery game products to the public. The rule provides for licensing requirements, retailer conduct in selling and redeeming Lottery tickets, and compensation paid to retailers for Lottery services. The Lottery paid retailers over \$15 million in commissions in fiscal year 1997.

D. Private and Public Employment.

Private and public employees are not directly affected by this rule.

E. Consumers and the Public.

There are no costs to the public associated with the amendment of this rule.

F. State Revenues.

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License fees and revenue generated by the sale of Lottery game tickets are distributed to those programs funded with Lottery monies. The Lottery collected \$6,800 in retailer license fees in fiscal year 1996. Transfers to State of Arizona funds were in excess of \$85 million.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The text of Article 2, as adopted, is substantially the same as the text of the proposed rule; however, grammatical, style, format, spelling, capitalization, punctuation and typographical errors have been corrected. The following changes were implemented to make the rules more concise and easier to understand:

A. Changes in R19-3-201. Retailer's Application and License

1. Subsection (A)(1)(e) the words "business name" was added.
2. Subsection (A)(1)(f) the words "and federal identification number recorded on Form W-9" were added at the end of the sentence.
3. Subsection (A)(1)(h) was deleted.
4. Subsection (A)(1)(m) was deleted.
5. Subsection (A)(2) the words "limited liability company, an association, or any other organization" was added after the word "corporation" in the first sentence. The words "as a corporation" were deleted in the last sentence.
6. Subsection (F) all references to "10 working days" was changed to "15 days," "15 working days" was changed to "20 days," and "50 working days" was changed to "75 days."
7. Subsection (J)(2)(c) the words "limited liability company, an association, or any other organization" was added after the word "corporation."
8. Subsection (K) the word "10 days" was changed to "15 days" in the last sentence.

B. Changes in R19-3-203. Revocation, Suspension, or Renewal Denial of Retailer's License

1. Subsection (A)(3)(a) the word "tickets" was added after the word "250."
2. Subsection (A)(3)(b) the word "tickets" was added after the word "400."

C. Changes in R19-3-205. Instant Game Requirements

1. Subsection (A)(4) the words "for example" were added in front of the statement in parenthesis.
2. Subsection (A)(6)(b) the word "10 days" was changed to "15 days."
3. Subsection (F) the words "declared sold" was changed to "the property of."

D. Changes in R19-3-206. On-line Game Requirements

1. Subsection (K) the sentence "The Lottery shall not pay a retailer a commission on sales transactions that are prohibited by any state or federal statute or rule." was added to the end of the text.
2. Subsection (M)(2)(b) the word "10 days" was changed to "15 days."

10. A summary of the principal comments and the agency response to them:

No comments were received by the agency.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

13. Was this rule previously adopted in an emergency rule?

No.

14. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 2. RETAILERS

Section

R19-3-201 Retailer's Application and License
R19-3-202 Special Retailers
R19-3-202 Direct Sales by Lottery

R19-3-203	Revocation, Suspension, or Renewal Denial of Retailer's License
R19-3-204	Display of Promotional Material; Compliance Investigations
R19-3-205	Instant Game Requirements
R19-3-206	On-Line Game Requirements

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R19-3-207 Compliance Investigations

ARTICLE 2. RETAILERS

R19-3-201. Retailer's Application and License

A. Application. Any A person interested in obtaining a license to sell lottery tickets shall:

1. File an application for a retailer's license with the Director on a application form provided by the Lottery. The form shall include the following: Submit to the Director a verified application on forms prescribed by the Director, containing the following information:
 - a. Name. If the applicant does business as an individual, the applicant's name, address, and phone number of the business;
 - b. Documentation on each controlling agent of the business;
 - b. If the applicant does business as a partnership or a limited liability partnership, the names, addresses, and phone numbers of all partners with a designation of any limited partners;
 - c. If the applicant does business as a corporation, limited liability company, an association, or any other organization, the names, addresses, and phone numbers of the president, vice-president, if any, secretary, and treasurer, or the functional equivalent of these officers, the directors, the owners of 10% or more of the stock or beneficial interest, and owners of equity that creates controlling interest in the business;
 - d. If the applicant does business as a corporation, a limited liability company or a limited liability partnership, evidence that the entity is in good standing with the Arizona Corporation Commission or the Secretary of State;
 - e. The business name, address, or location of the applicant's place of business and the mailing address if it is different from the place of business;
 - f. Name of insurance carrier and policy details;
 - f. The applicant's current transaction privilege tax license number issued pursuant to A.R.S. §42-1305 and federal taxpayer identification number recorded on Form W-9;
 - g. Certification that the applicant has complied with the statutes and rules governing the Americans with Disabilities Act;
 - h. Statement of six-month probation period for meeting average weekly sales for both the instant and the On-line games;
 - e h. Marketing and sales forecast information, on the forms and in the manner specified by the Lottery;
 - d i. Names and, addresses, and phone numbers of 3 business references;
 - e j. Financial relationship and any outstanding debt with the state of Arizona or any of its government subdivisions;
 - g k. Authorization agreement for electronic fund transfer with a valid bank account number from which any amount due the Lottery will be transferred;
2. Submit a nonrefundable application fee of \$25.00 \$36.00. A licensee that is a corporation, limited liability company, an association, or any other organization, may renew its licenses for all locations on the same date in accordance with the provisions of subsection (J). If the applicant is a business with more than 1 licensed location, the application fee for that location shall be pro-

rated at \$1.00 per month from the application date until the date the other licenses are due for renewal.

- B. To obtain or renew a license, a person shall submit to the Lottery evidence that the person is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines that the person has committed any act which, if committed or done by a licensed retailer, would be grounds for suspension or revocation of a license or that the person was named on any business license in this state or any other state that was suspended or revoked.
- C. To obtain a license, a person shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than ADA non-compliance, and shall not have sold lottery products without being licensed within 1 year of the person's date of application.
- D. The Lottery shall not issue a license to a minor, a partnership in which 1 of the partners is a minor, or a corporation, association or other organization in which a corporate officer, member or manager is a minor.
- BE. Residency requirement. The following are eligible to apply for a retailer's license To obtain a license, a person shall be:
 1. Residents A resident of Arizona;
 2. Corporations A corporation incorporated in Arizona or authorized to do business in Arizona;
 3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona;
 - 3 4. Partnerships A partnership in which at least one 1 of the general partners resides in Arizona; or
 - 4 5. Unincorporated An unincorporated businesses which are business authorized to do business in Arizona.
- E. Time-frame for licensure.
 1. The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fee prescribed in subsection (A).
 - a. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.
 - b. If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 15-day time-frame for completion of the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Director with all missing information.
 - c. If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.
 2. An applicant with an incomplete application shall submit all of the missing information within 20 days of service of the notice of incompleteness.
 - a. If an applicant cannot submit all missing information within 20 days of service of the notice of incompleteness, the applicant may obtain an extension by submitting a written request, which documents the reasons the applicant is unable to meet the 20-day deadline, to the Director no later than 20 days from service of the notice of incompleteness.
 - b. The Director shall review the request for an extension of the 20-day deadline and shall grant the request if the Director determines that an extension

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will enable the applicant to assemble and submit the missing information. An extension of the 20-day deadline shall be for no more than 20 days. The Director shall notify the applicant in writing of the decision to grant or deny the request for an extension. An applicant who requires an additional extension shall submit an additional written request in accordance with this subsection.

3. If an applicant fails to submit a complete application within the time allowed, the Director shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again in accordance with this Section.
4. From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
 - a. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.
 - b. If an applicant is found to be eligible, the Director shall issue a license to the applicant permitting the applicant to engage in business as a Lottery retailer under the terms of this Chapter.
 - c. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
 - d. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
 - e. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended once for no more than 20 days.
5. For the purpose of A.R.S. § 41-1072 et seq., the Director establishes the time-frames for a license to sell Lottery tickets:
 - a. Administrative completeness review time-frame: 15 days.
 - b. Substantive review time-frame: 75 days.
 - c. Overall time-frame: 90 days.
- G. The Director may license a qualified applicant to sell any 1 or any combination of the Lottery's game products. The Director may require a licensee to sell 1 or more Lottery products as a condition of selling any other Lottery product. A Lottery licensee shall sell only the type of Lottery product authorized by the Lottery.
- H. A license issued under this Chapter shall be signed by the Director or the Director's designated representative and by the licensee. A licensee shall not transfer a license and shall exhibit evidence of possessing the license upon demand. A licensee shall post the license number appearing on the license held by the licensee in a conspicuous place on the premises where the licensee sells lottery products. A violation of this subsection is grounds for disciplinary action in accordance with the provisions of R19-3-203.
- I. As a condition of licensure, each licensee shall agree to release, indemnify, defend, and hold harmless, the Arizona Lottery, its directors, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery

equipment, or terminal operations. This should not be construed in anyway to effect the rights of the licensee to recover for losses caused by any 3rd-party.

- E. Eligibility for license. Before issuing a retailer's license, the Lottery shall consider in addition to the factors specified in A.R.S. § 5-512(A):

1. The anticipated volume of average weekly sales, in comparison with the minimum standard of 250 instant tickets and 400 On-line tickets per week;
2. The validity of the information supplied in the application for a retailer's license;
3. The applicant's indebtedness to the state of Arizona or any other local, state, or federal government.

DJ. Duration and renewal of license. A retailer's license:

1. Shall remain in effect until the specified expiration date; A license issued under this Chapter shall expire 3 years from the license issuance date by operation of law.
 2. A licensee may renew a license to sell lottery tickets by submitting to the Director a verified application for renewal of the current license on forms prescribed by the Director containing the information required in R19-3-201(A), (B), and (E), accompanied by the required \$36 fee.
 - a. An application for renewal of a lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date, shall authorize the licensee to operate as a retailer until actual issuance of the renewal license.
 - b. The Director may refuse to renew a license in accordance with the provisions of R19-3-204.
 - c. All licenses held by the same corporation, limited liability company, an association, or any other organization, shall be renewed on the same date.
 3. A license issued under this Chapter that has expired by operation of law for failure to renew may be activated and renewed within 1 year of its expiration by filing the required application of renewal and payment of the application renewal fee provided for in this Chapter. If a license has been suspended for 1 or more years for failure to renew, a new application for license must be made and a new license issued in accordance with this Chapter.
 24. A license issued under this Chapter is subject to termination by the Director in accordance with the provisions of this Chapter prior to before the expiration date.
- EK. Nontransferability of license Change of Ownership or Business Location.**
1. A retailer's license issued pursuant to this Chapter is not transferable by the retailer. If the business to which a license is issued or the ownership substantially changes, the Director reserves the right to terminate the retailer's license. The Director shall be notified in writing by the retailer at least ten days prior to any proposed business change or substantial change in ownership. A substantial change in ownership means a transfer of equity that creates a shift in the controlling interest of any business licensed pursuant to this Chapter. If a licensee plans to sell, terminate, substantially change the ownership of the licensee's business, or change the business location, the licensee shall notify the Director in writing of the date of sale, termination, substantial ownership change, or change of business location at least 15 days before the transaction.

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1. The licensee shall surrender the license to the Director on the date of sale, termination, substantial ownership change, or business location change.
 2. A substantial change in ownership means a transfer of equity that creates a shift in the controlling interest of a licensee's business.
 2. Any change of business location shall be reported to the Director at least ten days prior to the effective date of the change.
- F. An applicant may request a hearing regarding denial of application for a retailer's license within 15 days of receipt of a license denial. The hearing shall be conducted in accordance with the provisions of A.R.S. Title 41, Chapter 6, Article 6 and R-19-3-204(B), (D), and (E).

R19-3-202. Special Retailers

- A. Eligibility for special retailer's license. This license is issued subject to conditions determined by the Director. These conditions shall include:
1. Length of license period;
 2. Hours or days of sale;
 3. Location of sale;
 4. Specific persons who sell lottery tickets;
 5. Specific sporting, charitable, social, or other special events where lottery tickets may be sold.
- B. Restrictions applicable to special retailers. Persons holding special retailer's licenses shall be subject to all provisions of the Act and this Chapter.

R19-3-203 R19-3-202. Direct Sales by Lottery

The Lottery may sell lottery tickets at its main office, or at any branch it establishes in the state, or any special event.

R19-3-204 R19-3-203. Revocation, Suspension, or Renewal Denial of Retailer's License

- A. Each A retailer's license may be revoked, suspended or its renewal denied denied renewal by the Director for any of the following reasons:
1. The retailer's application for a license contains false or misleading information.
 2. The retailer violates any of the provisions a provision of the Act or this Chapter.
 2. The retailer knowingly sells a ticket to a person less than 18 years old.
 3. The retailer's average weekly sales of tickets for the:
 - a. Instant game games are less than 250 tickets per week for the preceding game quarterly period;
 - b. On-line game games are less than 400 tickets per week for the preceding ten-week quarterly period.
 4. The retailer's business address is changed.
 5. The retailer commits an act which that impairs its the retailer's reputation for honesty and integrity.
 6. The retailer does not display lottery point-of-sale material in a manner which is readily visible and available to the public.
 7. The retailer does not make purchase or redemption of lottery tickets convenient and readily accessible to the public.
 8. The retailer provides to the Lottery a statement, representation, warranty, or certificate that is determined by the Lottery to be determines is false, incorrect, or incomplete.
 7. The retailer has 2 payments returned to the Lottery for insufficient funds in a 12-month period which is caused by the retailer's actions.

9. The retailer becomes insolvent, unable or unwilling to pay its debts, or is declared bankrupt.
 10. The retailer or any of its officers an officer, employees, or agents controlling agent of the retailer is:
 - a. Indicted for or Is convicted of a felony, felony theft that is designated as a misdemeanor, or any a crime involving moral turpitude, or gambling or fraudulent schemes and artifices;
 - b. The Is the subject of any an order, judgment, or decree of any a federal or state authority barring, suspending, revoking, or otherwise limiting its right to engage in any business, practice, or activity.
 10. Facts are discovered which, if known at the time the retailer's license was issued or renewed, would have been grounds to deny licensure.
 11. The retailer adds a minor as an owner, partner, or officer of the business.
 12. The retailer or an officer or employee of the retailer sells a ticket or pays a prize to oneself.
- B. The Director may on the Director's own motion, and shall on the written complaint of any person, investigate the acts of a licensee and may temporarily suspend, with or without imposing specific conditions or permanently revoke a license issued under this Article if the licensee is found to have committed an act or omission listed in subsection (A).
- BC. Procedure for hearings. The A retailer may request a hearing regarding the proposed a revocation, suspension, or renewal license denial of a license, if future delivery of tickets is withheld or the On-line Lottery terminal is summarily inactivated. The hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 10. If requested by the retailer in writing, a hearing shall be held within 15 days following receipt of the request.
1. The hearing shall be conducted by a hearing officer in an informal manner without formal rules of evidence or procedure.
 2. The hearing officer may:
 - a. Hold prehearing conferences to:
 - i. Settle, simplify, or identify the issues in a proceeding;
 - ii. Consider other matters that may aid in the expeditious disposition of the proceeding;
 - b. Require parties to state their positions concerning the various issues in the proceeding;
 - c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions and other procedural items pending before the officer;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. Impose appropriate sanctions against any person failing to obey an order under the following procedures:
 - i. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - ii. Excluding any or all testimony of an unresponsive or evasive witness.
 - iii. Expelling the person from further participation in the hearing;

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- h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;
 - i. Administer oaths or affirmations.
 - 3. A transcribed record of the hearing shall be made available at cost to any requesting party.
 - 4. The hearing officer shall make a recommendation to the Director, within ten days of the hearing date, based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
 - 5. The decision of the Director shall be made within ten days from the time that the recommendation is received from the hearing officer. The Director shall proceed in one of the following ways:
 - a. Accept, modify, or reject the hearing officer's recommendation in whole or in part;
 - b. Return the matter to the hearing officer with instructions;
 - c. Make any other appropriate disposition.
 - 6. The Director's decision shall be presented or mailed to all parties. Any party adversely affected may file an appeal with the Commission within ten days of receipt of the decision.
- C.D. Procedure for filing an appeal with the Commission:**
- 1. Any A person who wishes to appeal from the a final decision of the Director shall be filed file an appeal with the Lottery Commission within ten 15 days of receipt of the Director's decision. The filed appeal shall contain the following:
 - a. A copy of the Director's decision of the Director, and
 - b. The basis for the precise alleged factual or legal error in the decision of the Director from which the appeal is taken.
 - 2. The Lottery shall notify interested parties of the appeal within five days after the appeal is filed.
 - 32. Any interested party A person appealing the decision of the Director may file a written brief stating its the position on the appeal within ten 15 days after receipt of the notice decision.
 - 43. The Commission may provide for oral argument.
 - 54. The Commission's Commission shall make its ruling on the appeal shall be on the record.
- D. Procedure for rehearing. Any party who is aggrieved by a decision of the Commission to revoke, suspend, or deny renewal of a license may file a written request for rehearing of the decision specifying the precise factual and legal grounds contained in paragraph (5), subparagraph (c) of this subsection:**
- 1. The request for rehearing shall:
 - a. Be filed with the Lottery within ten days of the decision of the Commission;
 - b. Include any applicable supporting affidavits;
 - c. Be clearly designated as a "Request for Rehearing."
 - 2. The Lottery shall notify interested parties of the request for rehearing within five days after it is filed.
 - 3. Any interested party may file a response, including any opposing affidavits, within five days of receipt of the notice.
 - 4. Any argument not raised in the request or in a response is waived.
 - 5. If helpful to the Commission it may:
 - a. Require the filing of written briefs.
 - b. Provide for oral argument.
- e. Grant a rehearing of the decision for any of the following causes:
 - i. Irregularity in the appeal to the Commission or an abuse of discretion by the Commission, depriving the requesting party of a fair appeal;
 - ii. Misconduct of the Commission, its staff, or any party;
 - iii. Accident or surprise that could not have been prevented by ordinary prudence;
 - iv. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced in the appeal;
 - v. Excessive or insufficient penalties;
 - vi. Error in law, including the admission or rejection of evidence, occurring in the appeal;
 - vii. Evidence that the decision on appeal is not justified by the evidence or is contrary to law.
 - 6. The Commission's decision concerning a request for rehearing shall:
 - a. Be in writing;
 - b. State the basis of the decision.
 - 7. A decision granting a rehearing shall specify:
 - a. The grounds on which the rehearing is granted;
 - b. The date, time, and place of the rehearing.
 - 8. Any rehearing shall cover only those matters specified in the decision granting the hearing.
 - 9. The Commission, within the time for filing a request for rehearing under this rule, may on its own initiative order a rehearing of the decision for any reason for which the Commission may have granted a rehearing on request of a party.
- E. Any A final decision of the Commission shall be is subject to judicial review pursuant to under A.R.S., Title 12 41, Chapter 7 6, Article 6 10 by any party to the appeal before the Commission; action, and the complaint seeking review shall be filed with the Superior Court in Maricopa County and served on the Commission within the time prescribed pursuant to A.R.S. § 12-904.**
- F. Termination of a retailer's license.**
- 1. Sales shall not be allowed by the retailer from the date of receipt of the notice of termination. A retailer who receives a notice of license termination shall:
 - a. Immediately cease all sales of lottery products, and
 - b. Surrender the retailer's license and all other lottery property and products upon request by the Director's representative.
 - 2. The retailer shall appear before the Director on a date designated by the Director for the purpose of rendering a final lottery accounting and surrendering his retailer's license together with all other lottery property.
 - 32. If any the retailer fails to settle its the financial account and surrender its retailer's the license together with and all other lottery property on or before the designated date and products, the Director shall immediately take steps to impose the penalties and to exercise the enforcement powers provided for in the Act and this Chapter Article.
- R19-3-205 R19-3-204, Display of Promotional Material; Compliance Investigations**
- A. Requirements:**
- Each retailer shall prominently display and maintain a minimum of 3 different point-of-sale Lottery promotional materials. Promotional materials may include, but are not limited to, change mats, mobiles, strip banners, table tents, brochures, or stickers.

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- B.** Investigation of premises. Each retailer shall allow investigations during business hours by authorized investigators of the Lottery to determine whether the retailer is complying with the provisions of the Act and this Chapter.

R19-3-206 R19-3-205. Instant Game Requirements

- A.** Distribution and payment. Tickets The following describe the manner in which tickets for each instant game shall will be distributed to retailers and paid for in the following manner payment made:
1. Prior to the start of each game, the The Lottery or its authorized representative shall distribute to each retailer an initial supply the quantity of tickets in the quantity established by the Director on which the Lottery and the retailer agree, based on the retailer's anticipated volume of sales, along with an invoice payable as specified in the next monthly statement.
 2. For any subsequent delivery of tickets for each game, the net dollar value of all tickets distributed to a retailer shall be paid to the Lottery: The Lottery shall bill for instant ticket packs issued to a retailer 45 days after a pack is activated or after 85% of winning tickets in the pack are validated, whichever occurs 1st.
 - a. Within seven days of receipt of the next monthly statement for those retailers not paying by electronic transfer of funds.
 - b. As specified in the next monthly statement for retailers paying by electronic transfer of funds.
 3. Within 60 30 days following before the announced end of each instant game, the Lottery or its authorized representative shall collect unsold unopened full packs of tickets in the a retailer's possession of each retailer, including any full packs of tickets and one partial pack of tickets per retailer cash register. The Lottery shall credit to the retailer, within 60 days following the announced end of the instant game, the net dollar value of any unsold tickets unopened full packs of tickets collected by the Lottery within 60 days following the announced end of the instant game. All opened partial packs of tickets shall remain in the retailer's possession and may be sold before the end of the 180-day redemption period following the announced end of game.
 4. The Lottery may collect opened partial packs of tickets during a game if the Lottery and the retailer determine that sales for a specific game are minimal (for example, no sales activity within a 2-week period) and after the announced end of a game if the instant game is a seasonal, holiday, or event-related game.
 45. A retailer shall follow a schedule established by the Lottery for payment of all amounts due according to a statement or invoice provided by the Lottery. The retailer shall pay the amount due to the Lottery by a retailer shall be paid in the form of a personal or company check, cashier's check, money order, sight draft, certified check or an electronic transfer of funds. If a retailer's payment is returned to the Lottery due to insufficient funds or any other reason, the retailer may be required by the Director to pay the amount due in the form of a cashier's check, money order, sight draft, or certified check at the time of each delivery. If the amount due to the Lottery by a retailer is not paid on or before the due date, the Director may withhold further delivery of tickets to the retailer.
 6. A retailer shall deposit funds in a timely manner into a bank account from which an electronic transfer will be made to the Lottery.

- a. The retailer shall provide the Lottery with an electronic funds transfer authorization with a valid bank account number from which the amounts due the Lottery will be transferred.
- b. The retailer shall notify the Lottery of any bank account changes 15 days before the effective date of the change.

7. If a retailer's payment is returned to the Lottery for insufficient funds or any other reason, the retailer shall deliver a certified check, cashier's check, or money order or make a direct deposit to the Lottery's bank account before the next payment is due. Additionally, if the retailer's payment is returned to the Lottery,

- a. The Director may require the retailer to pay the amount due in the form of a cashier's check, money order, sight draft or certified check at the time of each future delivery of tickets;
- b. The Director may require the payment of each future delivery of tickets upon activation;
- c. The Director may summarily inactivate the retailer's instant ticket validation terminal;
- d. The Director may pick up the retailer's current inventory of tickets and withhold further delivery of tickets; and
- e. The Director may revoke, suspend, or deny renewal of the retailer's license in accordance with R19-3-203(A)(7).

- B.** Ticket prize validation and payment requirements. A retailer shall provide prize winner validation and payment services to any Lottery claimant regardless of where the ticket was purchased. The retailer shall pay all winner prizes, up to and including \$599, provided that the ticket is validated as specified in R19-3-705. Winner prizes may be paid by cash, business check or money order.

- BC.** Retailer's compensation. The Lottery shall pay Each a retailer shall be entitled to a commission of six percent 6 1/2% of the price of each instant lottery ticket it sells.

- CD.** Ticket Instant ticket sales. All instant game ticket sales are final and no the Lottery will not accept ticket returns are accepted except as prescribed in subsections (A)(3) and (A)(4).

- E.** In addition to the compensation specified in subsection (C), the Lottery shall pay an incentive of up to 1/2% on the price of each ticket sold to retailers who meet specifications established in writing by the Director. The written specifications shall be provided to the retailer before the incentive program begins.

- DE.** Unaccounted and stolen tickets.

1. Tickets unaccounted for by a retailer; regardless of the reason, shall be declared sold to the property of the retailer.
2. The claimant of any winning ticket shall disclose the location where the claimant obtained the ticket.
2. The retailer shall report stolen tickets to the local law enforcement agency within 1 hour of the theft or when discovered. In addition, the retailer shall report the event by telephone to the Lottery's Security Division within 1/2 hour of law enforcement notification and provide the Lottery with a copy of the written police report. The Lottery shall issue credit for stolen tickets in an amount equal to 50% of the retailer's purchase price for the instant tickets before retail sale less any 3rd-party reimbursement. The retailer shall cooperate in any investigation and prosecution of the theft.

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- a. The retailer shall sign an affidavit stating that the listed tickets were stolen and whether a claim for reimbursement is being or will be made with a 3rd party for the amount covered by the available Arizona Lottery credit. If the retailer obtains reimbursement for the stolen tickets from a source other than the Lottery, the Lottery credit will be reduced by the amount of the 3rd-party reimbursement.
- b. Each retailer location is limited to no more than 2 stolen ticket credits within 36 months of the date of the last theft for which a credit is requested.
3. If the claimed ticket for a prize is reported stolen or unaccounted for by a retailer, the Lottery shall hold the prize money in escrow pending the findings of an investigation by the an appropriate law enforcement agency when the claimed ticket for that prize is reported stolen or lost by a retailer.

~~R19-3-207~~ R19-3-206. On-line Game Requirements

- A. Ticket sales requirements. A retailer shall ~~execute all selling~~ On-line Lottery purchases and games shall issue On-line Lottery tickets using its authorized terminal in accordance with the Act and this Chapter.
 1. If a ticket is voided as prescribed in R19-3-401(C)(3), the retailer shall refund the ticket price to the ticket holder.
 2. If a retailer accepts a returned ticket from a player and the retailer does not void or resell the ticket, the Lottery shall deem the ticket to be owned by the retailer.
 3. A retailer shall not sell a ticket or combination of tickets to any person or entity that could guarantee the purchaser a win. A retailer shall not devote more than 15 minutes of sales in any hour to a purchase by any single player.
 4. A retailer shall not permit the use of facsimiles or copies of selection slips, or other materials that are inserted into a terminal's selection slip reader that are not printed or approved by the Lottery. Plays may be entered manually only by using the lottery terminal keypad or touch screen or by using a selection slip provided by the Lottery and hand-marked by the player.
 - B. Ticket claims prize validation and payment requirements. A retailer shall provide ~~claim prize winner validation and payment~~ services to any Lottery claimant regardless of where the ticket was purchased. ~~The retailer shall post the winning numbers and any bonus number immediately following the selection and communication of the numbers and keep them posted for at least three consecutive calendar days following their selection. If all the ticket validation criteria in R19-3-401(H)(I) are satisfied and a proper validation ticket, which is an authorization to pay, is issued by the terminal, the retailer shall pay a winner prize, up to and including \$599. Winner prizes may be paid by cash, business check, or money order.~~
 - C. Terminal location.
 1. An A retailer shall locate an on-line Lottery terminal shall be located at a site approved by the Lottery within the retailer's place of business and shall not be moved move the terminal from that site without prior approval from the Lottery prior to the move.
 2. The Lottery may require that the terminal be located on or in a kiosk or other structure provided by the Lottery.
 32. The A retailer shall be responsible for installation of and monthly payments for ensure that the electrical service and for installation of telephone facilities services to the terminal location; are installed in accordance with the
- specifications established by the Lottery. The retailer shall ensure also that monthly payments for the electrical services are made. The Lottery may assess the retailer for monthly data line charges if retailer sales of Lottery products are less than the required minimums established in R19-3-203.
3. If any action by the retailer makes it necessary to place an order with the providing telephone company to correct or relocate telephone service after the terminal is initially installed, the retailer shall pay for the charges incurred. The Lottery shall provide to the retailer a statement of charges and a copy of the telephone bill associated with the charges.
- D. Terminal conversion.
 1. If needed the Lottery deems it necessary, the Lottery shall modify its on-line Lottery system by:
 - a. Changing terminals, equipment, or accessories; or
 - b. Converting to another on-line system.
 2. Each A retailer shall assist the Lottery to the extent reasonable and practical to accomplish the modifications a modification of the on-line Lottery System in a timely and economical fashion, recognizing that the equipment is the property of the Lottery or its On-line contractor.
 - E. Terminal operation. Each A retailer shall have its on-line Lottery terminals terminal available for the sale, validation, cancellation, and cashing of on-line Lottery tickets at all times a minimum of 14 continuous hours each day while if the Lottery's on-line system is active and the retailer's business is open; except that no retailer shall be required to cash On-line tickets on Sundays.
 - F. The Arizona Lottery shall not be liable for damages of any kind due to failure of any on-line lottery terminal interruption or termination of on-line terminal operations.
 - ~~FG.~~ Terminal care. Each A retailer shall at all times:
 1. Operate the ~~On-line on-line~~ terminal, associated equipment, and accessories only in the ordinary course of its ~~On-line on-line~~ Lottery business and only in accordance with the requirements established by the Lottery; and
 2. Exercise diligence and care to prevent failures; and malfunctions of, and accidents to the terminal and other property of the Lottery or its property of on-line contractors for On-line operations.
 - ~~GH.~~ Terminal maintenance. Each A retailer shall:
 1. Keep the ~~On-line on-line~~ Lottery terminal, associated equipment, and accessories clean, orderly, and in good condition;
 2. Replace ribbons and ticket stock in the terminal as required; and
 3. Minimize terminal downtime by:
 - a. Notifying the Lottery or its ~~On-line on-line~~ contractor immediately of any ~~and all terminal failures failure, malfunctions malfunction, damages damage, or accidents accident; and~~
 - b. Making the terminal available for ~~repairs repair, adjustments adjustment, or replacement~~ at all times during the retailer's regular business hours.
 - ~~HI.~~ Terminal supplies. Each A retailer shall:
 1. Order and utilize use On-line on-line Lottery supplies, including but not limited to, ribbons, ticket stock, and ~~claim and settlement forms selection slips~~ exclusively from the Lottery or its ~~On-line designated~~ contractor; and
 2. Maintain a sufficient inventory of on-line Lottery supplies to avoid an out-of-stock situation; The Lottery shall furnish on-line supplies, at no cost, to the retailer.

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3. Receive, at no cost, supplies furnished by the Lottery.
- II.** Retailer training. Each A retailer shall:
1. Participate in On-line Lottery training courses and follow-up instruction; training provided by the Lottery in the operation of on-line terminals and sale of Lottery products, which may take place at a retailer's place of business;
 2. Ensure that all employees operating the On-line Lottery business attend the training courses and follow-up instruction selling Lottery products or operating Lottery on-line terminals are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and promotion of Lottery products and the operation of Lottery equipment;
 3. Assume responsibility Be responsible for:
 - a. Any compensation payable to employees for participation in the Lottery training courses and instruction; and
 - b. All other costs associated with employee training; and
 4. Provide all employees operating the on-line Lottery equipment with copies of the procedures manuals, bulletins, and technical materials which that are furnished to the retailer by the Lottery or its On-line on-line contractor.
- JK.** Retailer compensation. Each retailer shall: The Lottery shall pay a retailer a commission of 6 1/2% of the price of each on-line ticket it sells. The Lottery shall not consider a voided ticket a sale. The Lottery shall not pay a retailer a commission on sales transactions that are prohibited by any state or federal statute or rule.
1. Retain a commission of six percent of the price of each On-line ticket it sells, less the price of any voided tickets;
 2. Provide a settlement statement to the Lottery each week. The settlement statement shall include the following information:
 - a. Gross revenue from the sale of On-line Lottery tickets;
 - b. All cancellations and prize winnings paid out by the retailer.
 3. Pay to the Lottery each Friday the amount due from the sale of its On-line Lottery tickets for the 7-day period ending at the close of business on the previous Saturday. The amount due means the retailer's gross revenue, less any voided tickets, prize winnings paid out by the retailer, and the retailer's sales commission. If a retailer fails to make payment as required by the Lottery, the Director is authorized to summarily inactivate the retailer's On-line Lottery terminal.
- L.** In addition to the compensation specified in subsection(K), the Lottery shall pay an incentive of up to 1/2% on the price of

each ticket sold to retailers who meet specifications established in writing by the Director. The written specifications shall be provided to the retailer before the incentive program begins.

- M.** A retailer shall pay for on-line ticket sales in the following manner:
1. Pay to the Lottery each Friday the amount due from the sale of its on-line Lottery tickets for the 7-day period ending at the close of business on the previous Saturday. The amount due means the retailer's gross revenue, minus any voided tickets, prize winnings paid out by the retailer, and the retailer's sales commission.
 2. Pay the amount due to the Lottery by an electronic transfer of funds. The retailer shall deposit funds in a timely manner into a bank account from which the electronic transfer will be made to the Lottery.
 - a. The retailer shall provide the Lottery with an electronic funds transfer authorization showing a valid bank account number from which the amounts due the Lottery will be transferred; and
 - b. The retailer shall notify the Lottery of any bank account changes 15 days before the effective date of the change.
 3. If a retailer's payment is returned to the Lottery for insufficient funds or any other reason, the retailer shall deliver a certified check, cashier's check, or money order, or make a direct deposit to the Lottery's bank account before the next payment is due. Additionally, if the retailer's payment is returned to the Lottery,
 - a. The Director may summarily inactivate the retailer's on-line Lottery terminal; and
 - b. The Director may revoke, suspend, or deny renewal of the retailer's license in accordance with R19-3-203(A)(7).

R19-3-207 Compliance Investigations

- A.** A retailer shall comply with all provisions of the Act and this Chapter. The Lottery may conduct inspections to verify compliance and, if necessary, order an audit or investigation of the business for verification.
- B.** Investigation of premises. A retailer shall allow investigations during the retailer's regular business hours by authorized Lottery investigators to determine whether the retailer is complying with the provisions of the Act and this Chapter.
- C.** A retailer shall keep all invoices, records, bills and other papers and documents relating to the purchase, sale, and validation of Lottery products that are kept in the normal course of business for tax purposes for 5 years. These records and papers shall be easily accessible to the Lottery authorized investigator for examination or audit. Non-paper types of storage, such as microfiche, may be used. Records may be stored at a central location.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. Sections Affected

Article 2
R20-5-201

Rulemaking Action

Amend
Amend

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Notices of Final Rulemaking

R20-5-223
R20-5-224

New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing Statute: A.R.S. § 23-921(B)

Implementing Statute: A.R.S. § 23-961

3. Effective date of the rules:

October 9, 1998.

4. A list of previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 2 A.A.R. 3977, September 13, 1996

Notice of Proposed Rulemaking: 4 A.A.R. 1276, June 5, 1998

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Laura L. McGrory, Assistant Chief Counsel

Address: 800 West Washington St.
Phoenix Arizona 85007

Telephone: (602) 542-5781

Fax: (602) 542-6783

6. An explanation of the rule, including the agency's reason for initiating the rule:

In response to the legislative requirement of A.R.S. § 41-1073 to enact licensing time-frame rules, the Industrial Commission amended 20 A.A.C. 5, Article 2, to include time-frames for processing initial and renewal applications for authority to self-insure for workers' compensation. The Industrial Commission also amended the title of Article 2 to clarify that the requirements of Article 2 only apply to individual self-insurers and workers' compensation pools organized under A.R.S. §§ 11-952.01(B) and 41-621.01(A).

7. A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed rule changes do not diminish a previous grant of authority of a political subdivision of this state.

8. The summary of the economic, small business, and consumer impact statement:

Employers that meet the requirements of A.R.S. § 23-961 and Article 2 (individual employers and workers' compensation pools organized under A.R.S. §§ 11-952.01(B) and 41-621.01(A)) will be directly affected by and receive direct benefits from the rules. The Industrial Commission does not anticipate that individual employers and workers' compensation pools organized under Titles 11 and 41 will incur costs as a result of the licensing time-frames rules.

The Industrial Commission benefits from the rules because the rules provide specific time-frames for the processing of initial and renewal applications. This specificity enables the Industrial Commission to process applications more efficiently and increases accountability of the Industrial Commission. Because the Industrial Commission currently processes initial and renewal applications within the time set forth in the rules, the Industrial Commission does not anticipate that it will incur costs as a result of the licensing time-frame rules.

Two or more public agencies have the authority to enter into contracts or agreements to form workers' compensation pools under A.R.S. § 11-952.01. A workers' compensation pool organized under A.R.S. § 11-952.01 is a separate entity that is subject to approval by the Industrial Commission to self-insure under A.R.S. § 23-961. The Industrial Commission believes that public agency workers' compensation pools will benefit from knowing the time-frames within which initial and renewal applications for authority to self-insure will be processed. The Industrial Commission does not believe that public agencies will incur costs as a result of the rules that add time-frames. Additionally, the time-frame to process an initial application will not impair a public agency's ability to seek authorization to self-insure. Further, if a self-insured pool timely files a renewal application to self-insure, the existing authority to self-insure continues until the Industrial Commission takes action on the renewal application. Therefore, the time-frame to process a renewal application does not impact the self-insured pool.

Employers and workers' compensation pools organized under A.R.S. § 41-621.01(A) (contractors licensed to do work for the state) also benefit from knowing the time-frames within which the Industrial Commission will process initial and renewal applications to self-insure. Knowing how long it will take the Industrial Commission to process and review an application is particularly important to a Title 41 employer or Title 41 workers' compensation pool trying to coordinate workers' compensation coverage for employees. The Industrial Commission does not believe that a Title 41 employer or Title 41 workers' compensation pool will incur costs as a result of the rules that add time-frames. Additionally, the time-frame to process an initial application will not impair a Title 41 employer's or Title 41 workers' compensation pool's ability to seek authorization to self-insure. Further, if a Title 41 self-insured employer or pool timely files a renewal application to self-insure, the existing authority to self-insure continues until the Industrial Commission takes action on the renewal application. Therefore, the time-frame to process a renewal application does not impact the Title 41 self-insured employer or pool.

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Small businesses do not meet the criteria to self-insure for workers' compensation under A.R.S. § 23-961 and Article 2 of 20 A.A.C. 5. Therefore, the rules do not impact small businesses.

The Industrial Commission does not anticipate an impact on private persons or consumers as a result of the licensing time-frame rules.

9. A description of the changes between the proposed rule, including supplemental notices, and final rules:

The Industrial Commission made the following changes to the proposed rules. Language added after the proposed rules were published is indicated by bold text. Language stricken from the proposed rules is indicated by bold strike outs. The ICA's reason for the change is indicated in italics.

R20-5-201. Definition of Self-insurer

"Self-insurer" or "self-insured" A ~~self-insurer~~ means an individual employer or a workers' compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that ~~is has been~~ authorized by the Commission to self-insure for workers' compensation.

The ICA made this change in response to a suggestion from GRRC staff and to improve the clarity of the rule.

R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure Repealed.

A. Administrative completeness review.

1. Initial application.

~~...b. The Administration Division shall inform an applicant by written notice whether the application is deemed complete within the time-frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.~~

~~c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the ~~its~~ application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).~~

2. Renewal application.

~~a. The Administration Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine whether if the application contains the information required by A.R.S. § 23-961 and this Article.~~

~~b. The Administration Division shall inform a self-insurer by written notice whether the application is deemed complete within the time-frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.~~

~~c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the ~~its~~ application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).~~

R20-5-224. Computation of Time Repealed.

~~A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period ~~so~~ computed shall be included unless it is a Saturday, ~~or~~ Sunday, or a legal holiday, in which event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.~~

The ICA made changes in R20-5-224 to improve the clarity of the rule. Throughout the rule package the ICA added the word "Administration" before the word "Division" to clarify that the reference to "Division" means the Administration Division of the Industrial Commission. Other minor changes in punctuation and grammar were made throughout the rule package to improve the clarity of the rules.

10. Summary of principal comments and agency response to them.

The Industrial Commission did not receive any written or verbal comments.

11. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:

None.

12. Incorporation by reference and their location in the rules:

None.

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:

No.

14. The full text of the rules follows:

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TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 2. RULES OF THE INDUSTRIAL COMMISSION
OF ARIZONA GOVERNING SELF-INSURANCE
REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. §§ 11-952.01(B) AND 41-621.01**

Section

- R20-5-201. Definition of Self-insurer
- R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure Repealed.
- R20-5-224. Computation of Time Repealed

**ARTICLE 2. RULES OF THE INDUSTRIAL COMMISSION
OF ARIZONA GOVERNING SELF-INSURANCE
REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. §§ 11-952.01(B) AND 41-621.01**

R20-5-201. Definition of Self-insurer

"Self-insurer" or "self-insured" A self-insurer means an individual employer or a workers' compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that is authorized by the Commission to self-insure for workers' compensation.

R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure Repealed.

A. Administrative completeness review.

1. Initial application.

- a. The Administration Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
- b. The Administration Division shall inform an applicant by written notice whether the application is complete within the time-frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.
- c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).

2. Renewal application.

- a. The Administration Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
- b. The Administration Division shall inform a self-insurer by written notice whether the application is complete within the time-frame provided in subsection (A)(2)(a). If the application is incomplete,

the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.

- c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).

B. Substantive review.

1. Initial application. Within 70 days after the Administration Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Administration Division determines a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

- D. If an applicant or self-insurer cannot timely submit to the Administration Division information to complete an initial or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Administration Division no later than 40 days after receipt of the notice from the Administration Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45 day deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Administration Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.**

R20-5-224. Computation of Time Repealed.

- A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.**
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.**

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

1. **Sections Affected**

R20-6-1601	<u>Rulemaking Action</u>
R20-6-1604	Amend
	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 20-143

Implementing statutes: A.R.S. §§ 20-261.01 through 20-261.04
3. **The effective date of the rules:**

October 9, 1998.
4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Docket Opening: 4 A.A.R. 477, February 13, 1998.

Notice of Proposed Rulemaking: 4 A.A.R. 1098, May 15, 1998.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Vista T. Brown

Address: Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

Telephone: (602) 912-8451

Fax: (602) 912-8452
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

These rule revisions are necessary to update references to publications that have been superseded by more current publications. The current references in the rules to the Annual Statement Instructions in the Accounting Practices and Procedures Manual for Property/Casualty Insurance Companies, National Association of Insurance Commissioners, copyright NAIC 1992 Revised Edition and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, 1983 Revision (Publication 400), will be updated with the Annual Statement Instructions for the Accounting Practices and Procedures Manual for Property/Casualty Insurance Companies, National Association of Insurance Commissioners, copyright NAIC 1997, Revised Edition and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, 1993 Revision (Publication 500), respectively.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
8. **The summary of the economic, small business, and consumer impact:**

The Department does not anticipate an economic, small business or consumer impact with the adoption of the rule revisions. These rules are necessary for the Department to be able to reference the most current versions of the Annual Statement Instructions in the Accounting Practices and Procedures Manual for Property/Casualty Insurance Companies, National Association of Insurance Commissioners and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500).
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

The Department made technical changes requested by the Office of the Secretary of State to the text of the proposed rules which are shown in the text of the final rules.
10. **A summary of the principal comments and agency response to them:**

The Department received no comments opposing the proposed revisions to the rules on credit for reinsurance.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

No other matters prescribed by statute are applicable to the specific agency or to any specific rule or class of rules.
12. **Incorporations by reference and their location in the rules:**
 - a. The Annual Statement Instructions for Property and Casualty, National Association of Insurance Commissioners, copyright NAIC 1997. R20-6-1601(D)(1)

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- b. The Accounting and Practices and Procedures Manual, for Property/Casualty Insurance Companies, National Association of Insurance Commissioners, copyright NAIC 1997 Revised Edition. R20-6-1601(D)(1)
- c. The Annual Statement Instructions for Life, Accident and Health, National Association of Insurance Commissioners, copyright NAIC 1997. R20-6-1601(D)(1)
- d. The Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies, National Association of Insurance Commissioners, copyright NAIC 1997. R20-6-1601(D)(1)
- e. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, 1993 Revision (Publication 500): R20-6-1604(E)

14. Was this rule previously adopted as an emergency rule?

This rule was not previously adopted as an emergency rule.

15. The full text of the rules follows:

TITLE 20. COMMERCE, PROFESSIONS, AND OCCUPATIONS

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 16. CREDIT FOR REINSURANCE

Section

R20-6-1601. Credit for Reinsurance

R20-6-1604. Letters of Credit

ARTICLE 16. CREDIT FOR REINSURANCE

R20-6-1601. Credit for Reinsurance

- A. The requirements of A.R.S. § 20-261.01(A)(1) through (4) shall be determined as of the date of the ceding insurer's statutory financial statement in which the credit for reinsurance is claimed as an asset to or a deduction from liability.
- B. Accredited reinsurer, reinsurers
 - 1. No assuming insurer shall be an "accredited reinsurer insurer" under for purposes of A.R.S. § 20-261.01(A)(2) until it has submitted an made application to the Department on a form therefor on the form provided by the department and is approved by the Director. Director, and said application is either approved or not denied in accordance with paragraph (4) below.
 - 2. An application for accreditation as a reinsurer shall include: be accompanied by the following items:
 - a. Form AR-1. The requirement to file with the Director evidence of a reinsurer's submission to this state's jurisdiction and to submit to this state's authority to examine its books and records, as set forth in A.R.S. § 20-261.01(A)(2)(a) and (b), shall be accomplished by filing with the Director a properly executed Form AR-1, attached as Appendix A to this Article;
 - b. A certified copy of a letter or a certificate of authority or a certificate of compliance as evidence that the reinsurer is:
 - i. Licensed ~~Heensed~~ to transact insurance or reinsurance in at least 1 ~~one~~ state; or;
 - ii. A ~~if~~ a United States branch of an alien assuming insurer, that is entered through and licensed to transact insurance or reinsurance in at least 1 ~~one~~ state;
 - c. A certified ~~Certified~~ copy of the most recent annual statement filed with the insurance department of the reinsurer's state of domicile or entry and a copy of the ~~its~~ most recent audited financial statement;
 - d. The payment of an application filing fee in accordance with A.R.S. § 20-230; and

- e. Any other supporting documentation the Director may require.
- d. ~~Such other supporting documentation as the Director may require; and~~
- e. ~~Payment of an application filing fee in accordance with A.R.S. § 20-230.~~
- 3. The Director may examine ~~conduct such examination of~~ the reinsurer's books and records as deemed necessary ~~for and proper in connection with~~ the application for accreditation, in accordance with A.R.S. §§ 20-142 and 20-156 through 20-160.
- 4. A reinsurer is ~~shall be an accredited reinsurer~~ "accredited reinsurer" if, after submission of a complete application:
 - a. The ~~reinsurer~~ ~~Director determines that it maintains surplus for as regards policyholders in an amount of not less than \$20 million, and the Director approves, or within 90 days of submission of the its application, has not denied, the its application; or~~
 - b. The ~~reinsurer~~ ~~Director determines that it maintains surplus for as regards policyholders in an amount of less than \$20 million, and the Director approves the its application.~~
- 5. An Every accredited reinsurer shall pay its annual filing fees, in accordance with A.R.S. § 20-167, by March 1 of each year and shall file annually with the Director, the following together with filing fees in accordance with A.R.S. § 20-167:-
 - a. A certified copy of the ~~its~~ annual statement that is filed with the insurance department of its state of domicile or entry, on by or before March 1 of each year; and
 - b. A copy of the ~~its~~ most recent audited financial statement, on by or before June 1 of each year.
- 6. The Director may revoke the accreditation of any reinsurer for cause, including failure to comply with the ~~requirements of A.R.S. § 20-261.01(A)(2) or this Section rule, after notice and a hearing, in accordance with A.R.S. §§ 20-161 through 20-166, and Title 41, chapter 6, article 10.~~
- 7. A reinsurer may surrender its accreditation only upon application to, and approval by, the Director.
- 8. A No credit shall be allowed a domestic ceding insurer for reinsurance shall not use as a credit as an asset to or a deduction from liability on account of reinsurance ceded under pursuant to A.R.S. § 20-261.01(A)(2) if the assuming

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insurer's accreditation ~~is has been~~ denied, revoked or surrendered.

C. Reinsurer domiciled and licensed in another state.

1. Substantially similar For purposes of A.R.S. § 20-261.01(A)(3), "substantially similar" standards under A.R.S. § 20-261.01(A)(3) means credit for reinsurance standards that which the Director determines are equal to or exceed the standards of A.R.S. § 20-261.01 and this Section Article.
2. The reinsurer shall submit to this state's authority to examine the books and records of the reinsurer under A.R.S. § 20-261.01(A)(3)(b) by filing Form AR-1, requirement to submit to this state's authority to examine the reinsurer's books and records, as set forth in A.R.S. § 20-261.01(A)(3)(b), shall be accomplished by filing with the Director a properly executed Form AR-1.

D. Reinsurer Reinsurers maintaining trust funds.

1. The For purposes of A.R.S. § 20-261.01(A)(4)(b), the aggregate policy holders' surplus of a group of incorporated insurers under common administration under A.R.S. § 20-261.01(A)(4)(b) shall be calculated and reported in substantially the same manner as prescribed by the Annual Statement Instructions for Property and Casualty, National Association of Insurance Commissioners, copyright NAIC 1997, and the Accounting and practices and Procedures Manual, for Property/Casualty Insurance Companies, National Association of Insurance Commissioners, copyright NAIC 1997 1992 Revised Edition, The Annual Statement Instructions for Life, Accident and Health, National Association of Insurance Commissioners, copyright NAIC 1997, and the Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies, National Association of Insurance Commissioners, copyright NAIC 1997, which are all and no later amendments or editions; and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, copyright NAIC 1991 Third Printing and no later amendments or editions; incorporated by reference herein and on file with the Office of the Secretary of State and available from the National Association of Insurance Commissioners, Publications Department, 120 W. 12th Street, Suite 1100, Kansas City, Missouri 64105-1925. These incorporations by reference contain no future editions or amendments.
2. The reinsurer maintaining trust funds shall requirement to submit to this state's authority to examine the reinsurer's books and records, under as set forth in A.R.S. § 20-261.01(A)(4)(b), shall be accomplished by filing with the Director a properly executed Form A-1.
3. For purposes of A.R.S. § 20-261.01(A)(4)(b), the trust instrument shall expressly state provide that:
 - a. Contested claims shall be valid and enforceable out of trust funds funds in trust to the extent these claims remain remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.
 - b. Legal title to the assets of the trust assets shall be vested in the trustee for the benefit of the reinsurer grantor's United States policyholders and ceding insurers, and any their assigns of and successors in interest to the policyholders and ceding insurers.
 - c. The trust is shall be subject to examination upon the Director's request, as determined by the Director.

- d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, within the meaning of A.R.S. § 20-261.01(A)(4) (a) and (b) has shall have outstanding obligations under a reinsurance agreement agreements subject to the trust.
- e. No later than February 28 of each year, the trustee trustees of the trust shall file a written report stating:
 - i. The report to the Director in writing setting forth the balance in the trust,
 - ii. A list of and listing the trust's investments at the preceding year end, and
 - iii. A statement certifying shall certify the date of termination of the trust, if so planned, or a statement certifying certify that the trust shall not expire before prior to the next following December 31, and;
- f. An No amendment to the trust is not shall be effective unless reviewed and approved in advance by the Director.

- E. For purposes of A.R.S. § 20-261.01(A)(5), "jurisdiction" means any state, district or territory of the United States or and any lawful national government.

R20-6-1604. Letters of Credit

- A. For purposes of A.R.S. § 20-261.02, a letter of credit shall contain an issue date, and an date of expiration date subject to the "evergreen clause" in subsection (D) of this Section. The letter of credit shall state that:
1. The and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented for payment;
 2. The letter of credit shall also indicate that it is not subject to any conditions or qualifications not contained in outside of the letter of credit. In addition; and
 3. The the letter of credit does itself shall not contain reference to any other agreements, documents, or entities, except as provided in subsection (H)(1) below. As used in this Section, "beneficiary" includes any successor of the named beneficiary by operation of law, including without limitation any receiver, conservator, rehabilitator, or liquidator.
- B. The heading of the letter of credit may include a boxed section for use by the issuing bank, which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that the such information is for internal identification purposes only.
- C. A The letter of credit shall state contain a statement to the effect that the obligation of a the qualified United States financial institution under the letter of credit is not in no way contingent upon reimbursement with respect thereto.
- D. The term of the letter of credit shall be for no less than 1 year, and the letter of credit at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30 days' notice before prior to expiration or nonrenewal.
- E. The letter of credit shall state whether it is subject to and governed by the laws of any state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, 1993 Revision (Publication 500) 1983-Revision (Publication 400) and no later amendments or editions incorporated by reference herein and on file with the

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Office of the Secretary of State and available from ICC Publications, 156 Fifth Avenue, New York, New York 10010. This incorporation by reference contains no future additions or amendments. All and all drafts of letters of credit drawn according to Publication 500 thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. ~~A~~ If the letter of credit is made subject to the said Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ~~then the letter of credit shall specifically provide address and make provision for an extension of time to draw against the letter of credit if 1 in the event that one or more of the occurrences specified in Article 17 of Publication 500 19 thereof occur.~~

G. If the letter of credit is issued by a financial institution other than a qualified United States financial institution as defined in A.R.S. § 20-261.03, then ~~the letter of credit~~ it shall be confirmed by ~~such~~ a qualified United States financial institution, and the following additional requirements shall be met:-

1. The ~~issuing~~ financial institution ~~issuing the letter of credit~~ shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts ~~of the letter of credit~~ and
2. The ~~letter of credit shall contain an "evergreen clause", shall provide for 30 days' notice prior to expiration or nonrenewal.~~

H. Reinsurance agreement provisions.

1. The reinsurance agreement ~~for in conjunction with~~ which the letter of credit is obtained may ~~contain provisions which:~~

- a. Require the assuming insurer to provide ~~a letter~~ letters of credit to the ceding insurer and specify what ~~it covers, they are to cover.~~
- b. Stipulate that the letter of credit provided by the assuming insurer ~~under pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and The agreement shall be used utilized by the ceding insurer or its successors in interest only for the following, one or more of the following reasons:-~~

- i. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of ~~the~~ policies reinsured under the reinsurance agreement ~~because on account of cancellation cancellations of the such policies;~~
- ii. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid ~~policy owners and claimants~~ by the ceding insurer under the ~~terms and provisions of the policies reinsured under the reinsurance agreement;~~

iii. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement, ~~such~~ The amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred, and unearned premium reserves; and

iv. To pay any other amounts the ceding insurer claims ~~are due~~ under the reinsurance agreement.

c. Require that the foregoing provisions of ~~subsections (H) paragraphs (a) and (b) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.~~

2. Nothing contained in ~~subsection paragraph (1) of this subsection shall preclude precludes~~ the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest of ~~a~~ the qualified United States financial institution as defined in A.R.S. § 20-261.03 issuing or confirming the letter of credit, on the ~~amount held under amounts held pursuant to paragraph subsection (H) (1)(b)(iii) of this subsection;~~ and

b. The return of any ~~amount~~ amounts drawn on a ~~letter~~ the letters of credit ~~which is~~ in excess of the actual ~~amount~~ amounts due or, in the case of ~~subsection (H) paragraph (1)(b)(iv) of this subsection,~~ any ~~amount~~ amounts subsequently determined not payable to be due.

3. ~~If an insurer obtains~~ When a letter of credit is obtained in conjunction with a reinsurance agreement ~~that covers covering~~ risks other than life, annuities, and health, ~~and where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may state, instead of, in lieu of paragraph subsection (H)(1)(b)(iv) of this subsection, require that the parties enter into a "Trust Agreement". The trust agreement which may be incorporated into the reinsurance agreement or it may be a separate document.~~

I. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in ~~a financial statement~~ financial statements required to be filed with the Director unless ~~a an~~ acceptable letter of credit naming with the filing ceding insurer as beneficiary ~~is has been~~ issued on or before December 31 in the year for which ~~the~~ filing of the financial statement is made. ~~The Further, the reduction in liability for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement secures, which the letter of credit was intended to secure.~~